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CONTEMPORARY FORMS OF SLAVERY

The adoption of children for commercial purposes and the recruitment of children into government and non-governmental armed forces

Report of the Secretary-General prepared pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1989/41

CONTENTS

		Paragraphs	Page
	Introduction	1 - 8	1
Chapter			
I.	THE ADOPTION OF CHILDREN FOR COMMERCIAL PURPOSES	9 - 55	3
	A. Background	9 - 24	3
	B. Information received from Governments ...	25 - 40	7
	C. Information received from United Nations organs, specialized agencies and intergovernmental organizations	41 - 46	9

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CONTENTS (continued)

		Paragraphs	Page
	D. Information received from non-governmental organizations	47 - 55	10
II.	THE RECRUITMENT OF CHILDREN INTO GOVERNMENT AND NON-GOVERNMENTAL ARMED FORCES AND THEIR PARTICIPATION IN HOSTILITIES	56 - 94	14
	A. Background	56 - 71	14
	B. Information received from Governments..	72 - 82	18
	C. Information received from United Nations organs, specialized agencies and intergovernmental organizations	83 - 87	19
	D. Information received from non-governmental organizations.....	88 - 94	21
III.	CONCLUSIONS	95 -103	25

Introduction

1. The Sub-Commission in its resolution 1989/41 of 1 September 1989 requested the Secretary-General to submit to the Sub-Commission, at its forty-second session, a report on the adoption of children for commercial purposes and on the recruitment of children into government and non-governmental armed forces and their participation in hostilities, taking into account the comments of Governments, and further information received by him.

2. Pursuant to this resolution, the Secretary-General, on 24 November 1989 addressed requests to Governments, United Nations organs, specialized agencies, intergovernmental organizations and non-governmental organizations for information to facilitate the compilation of his report.

3. By 11 June 1990 replies had been received from the following States: Austria, the Bahamas, China, Colombia, Dominican Republic, Finland, Iraq, Mexico, Philippines, Portugal, Saudi Arabia, South Africa, Sweden, Tunisia, Ukrainian Soviet Socialist Republic and Uruguay.

4. Replies were also received from the following: United Nations organs - Economic Commission for Africa, Economic Commission for Latin America and the Caribbean, Economic and Social Commission for Western Asia, United Nations Centre for Social Development and Humanitarian Affairs, United Nations Development Programme, United Nations High Commissioner for Refugees and the United Nations University; specialized agencies - International Labour Organisation, Food and Agricultural Organization, United Nations Educational, Scientific and Cultural Organization; intergovernmental organizations - Commission for the European Communities, Hague Conference on International Private Law, International Criminal Police Organization, Organisation for Economic Co-operation and Development and the Organization of American States.

5. The following non-governmental organizations submitted information: Christian Children's Fund, Inc., Defence for Children International, Friends World Committee for Consultation (Quakers), International Catholic Child's Bureau, International Federation of Social Workers, International Federation of University Women, International Federation Terre des Hommes and the Inter-Parliamentary Union.

6. Pursuant to the mandate, the Secretary-General deemed it appropriate to divide the present report into two sections. Thus the first part of the report addresses matters pertaining to the adoption of children for commercial purposes while the second part relates to the subject of recruitment of children into government and non-governmental armed forces and their participation in hostilities.

7. The replies received to the request for information being few in number but detailed and in view of the wide range of the subject-matter, this report does not presume to be comprehensive. It is rather the intention of the Secretary-General to submit information on the various views presented as a contribution to furthering understanding of the recent developments on

children's issues with regard to the adoption of children for commercial purposes and children in armed conflict. (The full text of all information received is available for consultation in the files of the Secretariat).

8. In the preparation of this report, the Secretary-General has also taken into account the information sent to him as well as that available within previously published documents of the United Nations. Any additional information will be contained in an addendum to this document.

I. THE ADOPTION OF CHILDREN FOR COMMERCIAL PURPOSES

A. Background

9. A variety of social and economic factors have led to the evolution of adoption as a global phenomenon with a myriad of, among other things, administrative and legal implications requiring greater attention at all levels.

10. Prevention of the adoption of children for commercial purposes, mainly through the medium of inter-country adoption has been addressed by various organs of the United Nations, international human rights instruments, regional and bilateral agreements and standards as well as within national law and the field of private law. This process is still continuing.

11. Since the 1960s serious concern has been repeatedly expressed by the United Nations for protective measures for children affected by inter-country adoption. In 1960 a European Seminar on Inter-country Adoption was convened in Leysin, Switzerland, under the auspices of the United Nations, and the way was paved for further regional and international efforts. At the seminar, recommendations were made regarding national and international action to assist in overcoming the legal difficulties arising from inter-country adoption, particularly where adoptions were subject to domestic laws. To settle such discrepancies two remedies were envisaged: firstly, to make adoption law uniform through international conventions and this was achieved by the European Convention on the Adoption of Children concluded on 24 April 1967; secondly, to reach international agreement on the essential points of conflict (jurisdiction, applicable law) in order to guarantee the international recognition of adoptions and this was reflected in the Hague Conference Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoption of 15 November 1965. For further information in this regard see UN/TAO/SEM/1960/Rep.2 and the Report of the Secretary-General on the Convening of a United Nations Conference for an International Convention on Adoption Law, E/CN.5/504, in which it was stated, inter alia, that few countries provide adequate standards for the protection of children in inter-country adoption, and repeated the conclusions of the Leysin Seminar on Inter-country Adoption.

12. On the recommendation of the Commission for Social Development, having considered the above-mentioned report of the Secretary-General, the Economic and Social Council in resolution 1925 (LVIII) of 6 May 1975 requested the Secretary-General to convene a group of experts to prepare, inter alia, a draft declaration of social and legal principles relating to adoption and foster placement of children nationally and internationally. On the basis of the general exchange of views on the subject, the Group adopted a draft declaration (see ST/ESA/99).

13. The various studies, meetings and international conferences on adoption and foster placement culminated in the General Assembly's adoption, without a vote, on 3 December 1986 of resolution 41/85 on the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.

14. The Declaration of 1986 contains three sections: General Family and Child Welfare, Foster Placement and Adoption. In connection with international adoption, the Declaration's articles 17 to 24 provide for, among other things, the following:

(a) Inter-country adoption where a child cannot in any suitable manner be cared for in the country of origin, and the establishment of policy, legislation and effective protection of children involved in inter-country adoption;

(b) Policies and laws for the prohibition of abduction and of any other act of illicit placement of children;

(c) Placements to be made through the competent authorities, and in no case to result in improper financial gain for those involved;

(d) Prevention of inter-country adoption before it has been established that the child is legally free for adoption;

(e) The legal validity of the adoption to be assured in each of the countries involved and all due weight to be given to both the law of the State of which the child is a national and the law of the State of which the prospective parents are nationals, in this connection due regard to be given also to the child's cultural and religious backgrounds and interests.

15. In contrast to the 1986 Declaration, the 1989 Convention on the Rights of the Child provides for implementation mechanisms through the Committee on the Rights of the Child. Article 21 in particular relates directly to the issue of adoption and provides for special safeguards for the child in cases of adoption, where the system is permitted and recognized, especially with regard to ensuring that placement in inter-country adoption does not result in improper financial gain. The text of article 21 reads as follows:

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

16. This Convention on the Rights of the Child was prepared by a drafting group of the Commission on Human Rights from 1979 to 1989 and was adopted without a vote by the General Assembly in resolution 44/25 of 20 November 1989.

17. It should be noted therefore that parallel to the study of adoption practices as a social phenomenon, human rights bodies, particularly the Working Group on Contemporary Forms of Slavery, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights have considered the commercial aspects of adoption practices within, inter alia, the ambit of the sale of children.

18. In the Updated Report on Slavery, E/CN.4/Sub.2/1982/20, prepared by the Special Rapporteur, Mr. Ben Whitaker, paragraph 74 stated that "Growing concern is being expressed at the separate practice of the sale of children for adoption, generally from developing to advanced countries." Within the Report on the Exploitation of Child Labour prepared by the Special Rapporteur, Mr. Abdelwahab Bouhdiba (E/CN.4/Sub.2/479/Rev.1), it was stated "that in at least three cases the exploitation of child labour is no less than a flagrant crime which violates the United Nations Charter, the principles of the Charter and the Universal Declaration of Human Rights, and the most elementary principles of morality and all positive laws. Energetic repressive reaction is called for in these cases, namely: Sale and similar practices (serfdom, bond-service, fake adoption, abandonment);... In these cases and as a matter of priority, there should be concerted action by the International Criminal Police Organization (INTERPOL) and increased pressure on States condoning such practices, since here it is not a matter of restricting such practices but putting a stop to them." Moreover, Mr. Fernand-Laurent, the Special Rapporteur for the Report on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, wrote in paragraph 43 of his report (E/1983/7) that, inter alia, "a report on the causes and implications of the sale of children, including commercially motivated and especially transnational adoptions should be prepared" in accordance with resolution 1982/15 of the Sub-Commission. Reports and notes were thus prepared by the Secretary-General on the Sale of Children and are contained in E/CN.4/Sub.2/AC.2/11 of 1977, E/CN.4/Sub.2/1987/28, E/CN.4/Sub.2/1988/30 and E/CN.4/Sub.2/1989/38.

19. Most recently, activities relating to the subject of the sale of children, having constituted part of the main theme of the Working Group on Contemporary Forms of Slavery's agenda of 1989, figured not ably in resolutions adopted by the Sub-Commission in 1989 and the Commission on Human Rights in 1990. It may be useful at this point to make mention of certain of the material presented to human rights bodies which relate to the issue of adoption.

20. The report, E/CN.4/Sub.2/1988/19, on Prevention of the Disappearance of Children prepared by Mr. Theo van Boven for the Sub-Commission was mainly concerned with the fate of children who disappeared from Argentina between 1976 and 1984. Under the sub-heading, "The moral dangers faced by children taken away from their families", extracts from paragraphs 38 and 39 give details of a ruling handed down by an Argentinian judge, in which it was stated that: "Cases such as the one I am trying, in which a newborn child is treated as a 'thing' which may be disposed of at will, once and for all, are, as far as the persons responsible are concerned, part of the ransacking and looting of the homes they destroyed, but there can be no possiblity of regarding as a mitigating circumstance the fact that the child might have been given good care, luxury and even affection, since false pretences and treatment to which the child was subjugated may be equated with slavery or something worse, since a slave is at least allowed to know where he came from." The report continued: "the ruling goes on to explain that cases of the appropriation of missing children cannot be compared to adoption, which is done on the basis of ethical principles, without trickery, and involves the free and conscious cession of paternity rights, without violence or any compulsory break in family ties, whereas the situation with which we are dealing, which is surrounded by fraud and forgery and in which there is no law or truth, but only the absolute power of the abductors, undermines what should be a parent-child relationship, with the resulting damage to the child's psyche and to society as a whole...".

21. In paragraph 51 of a report on Guatemala, E/CN.4/1989/39, undertaken by the Expert of the Commission on Human Rights, Mr. Hector Gros Espiell, it was written that "trafficking for the purpose of adoption was the most prevalent (form of trafficking in children) and was currently causing the greatest concern to the Guatemalan authorities. The existing law on adoption was described by the expert as outdated, the report subseqently noted that the Congress of the Republic was studying a bill on adoption which had been drafted in co-operation with the Supreme Court of Justice and that the new adoption bill recommended that authority in child adoption cases be vested in the family courts. Other problems noted in the report emanated from, inter alia, the lack of supervision by the State of the children's homes or foster homes where most adoptable children are housed, and the power of notaries to give final authorization for adoption.

22. From the report of the Working Group on Contemporary Forms of Slavery, E/CN.4/Sub.2/1989/89, it may be noted that Defence for Children International stated that it had carried out a comprehensive study, in co-operation with the Government of Argentina on the occurrence of the sale of children in Argentina.

23. Commenting on this study, the Observer for Venezuela, in paragraph 22 of E/CN.4/Sub.2/1989/39, "congratulated the Argentinian Department for Child Protection, considered that the causes of the traffic in children for adoption were universal and, in particular noted that the conclusions of the study recommending that one way of combating the traffic in children for adoption could be to review national legal systems in order to adjust them to present adoption needs."

24. According to paragraph 42 of the report of the fourteenth session of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1989/39) the Observer for Brazil drew attention to a document prepared by Defence for Children International entitled "Protecting Children's Rights in International

Adoptions" which examined different aspects of the issue, specifically linking the problems of abandoned children, international adoption and child trafficking in a developing and deeply indebted country, such as her own.

B. Information received from Governments

25. Despite the limited number of replies from Governments, the information forwarded was extremely detailed and valuable.

26. The fundamental importance of only considering adoption when it was in the best interests of the child was emphasized repeatedly in the replies from States. As an indication of the protection afforded to children in adoption practices, the provisions of national legislation, regional and international standards, existing and in preparation, were referred to. Additional information on the existence or non-existence of such practices was offered.

27. Commentaries received from the majority of Governments, including Colombia, Finland, Iraq, Mexico, Sweden, Tunisia and Ukrainian SSR pointed to the juridical and administrative procedures on adoption existing in their countries. Finland, Iraq and Ukrainian SSR gave information about the examination of the suitability and qualifications for adoption and Finland indicated that it offered adoption guidance for adoptive parents.

28. Colombia, Dominican Republic, Finland, Iraq, Mexico and Sweden and Ukrainian SSR stated in their replies that adoption was only permitted in the case of minors. In the case of Finland it was stated that a child who had attained the age of 12 could not be adopted against his/her consent.

29. Replies from Iraq, Tunisia and the Ukrainian SSR also gave details concerning the revocation of an adoption, if adoption were not, inter alia, in the best interests of the child or the adoption had been found to be irregular in some respect.

30. Austria stated that no cases had been reported of children being adopted for commercial purposes.

31. Colombia stated that adoption of children for commercial purposes was banned under Colombian law. Furthermore, criminal penalties had been introduced for any persons who promoted or carried out adoptions of minors without satisfying the appropriate legal requirements.

32. The Dominican Republic in its reply stated that, according to its Civil Code, adoption is provided for if it is to the benefit of the minor, but not for commercial purposes.

33. Finland's Adoption Act Section 3 specifically prohibited adoption of a child against compensation or promised compensation. It was further stated that there were no legal prerequisites in Finland for adopting a child or using the child for commercial or illegal purposes. In its reply Finland also made reference to the Child Custody and Right of Access Act and the Child Welfare Act in which it was prescribed, among other things, that the child shall be ensured good care and upbringing as well as appropriate protection and supervision and shall not be subject to corporal punishment. In this regard, it was stated, that the Ministry of Social Affairs and Health

considered that adoption of a child for reasons other than in order to ensure his or her upbringing should be prohibited by means of international agreements as well as by the legislation of each State.

34. Iraq stated that it condemned all forms of child adoption for commercial or employment related purposes as inhuman practices.

35. The reply from Portugal indicated that article 21 of the Convention on the Rights of the Child is modelled closely on the wording of the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, and reinforces the protection of the child in inter-country adoption. In this connection it was mentioned, among other things, that the relevant provision relating to inter-country adoption and measures to ensure that placement did not result in improper financial gain for those involved in it, namely the competent authorities, the natural parents and the legal guardians, was an important step. It would prevent the very situation in which adoption may constitute, not a solution safeguarding the child's welfare, but an apparently lawful means of concealing a traffic in which the child is made a source of profit and an item of concealed trade. It was also indicated that every State now had a duty to establish adoption procedures which would best protect the child's interests.

36. It was indicated by Sweden that, according to chapter 4, section 6, of the Code relating to Parents, Guardians and Children, an application for adoption may not be granted if any of the parties involved made or promised remuneration.

37. The concept of adoption for commercial ends, it was stated in the reply from the Ukrainian SSR, was alien to Soviet legislation.

38. Mexico in its reply stated that cases of adoption of children for commercial ends had been recorded in Mexico. It was also mentioned that there was evidence that adoption was commonly used as a legal pretext for adopting minors abroad. Further it was regarded as unfortunate that not all adoptions were made in accordance with the law and that huge numbers of potential parents from abroad applied to unauthorized agencies undertaking to provide children in exchange for payment. It was stated that the unlawful ends for which Mexican minors were adopted included exploitation of their labour, sexual exploitation, sale of children for profit and even sale of organs, all of which were regarded as constituting unlawful trafficking in minors.

39. Measures taken by Mexico at the national and international levels in response to the existence of commercially motivated adoption practices were outlined. It was stated that the adoption of minors in Mexico was governed by the local legislation of each state, which accounted for a lack of co-ordination where international adoptions were concerned and that a bill had been drawn up laying down regulations pursuant to article 4 of the Constitution, which, if adopted by Congress, would provide a basis for harmonizing standards relating to international adoption. Moreover, an information campaign was being carried out to advise people that in Mexico the National Scheme for the Comprehensive Development of the Family (DIF) was the sole specialized agency authorized to handle the adoption of minors either by Mexicans or by foreigners, who had met the necessary legal and institutional requirements. Also at the international level, Mexico had signed the

Inter-American Convention on Conflict of Laws concerning the Adoption of Minors and the United Nations Convention on the Rights of the Child and that it hoped to accede to the Hague Convention on Civil Aspects of International Child Abduction.

40. Austria and Mexico in their replies referred to their active involvement in the present efforts, within the framework of the Hague Conference on International Private Law, for the preparation of a future global adoption agreement which Austria stated would deal in particular with the problems of children from the Third World.

C. Information received from United Nations organs, specialized agencies and intergovernmental organizations

41. The Centre for Social Development and Humanitarian Affairs stated that the exploitative practice of child sale and traffic had been a matter of serious concern at the interregional preparatory meeting for the Eighth United Nations Congress on Prevention of Crime and Treatment of Offenders held in Vienna from 18-22 April 1988 and the five regional preparatory meetings held in 1989. The Eighth United Nations Congress was expected to examine innovative policy options on behalf of those young victims, in view of the clear need for action-orientated strategies to promote a more effective response on the part of juvenile justice systems and the machinery of justice as a whole at all levels.

42. The United Nations High Commissioner for Refugees drew attention to the subject of adoption and its relevance to the problem of unaccompanied minors. It was recognized that any durable solution for unaccompanied refugee children may involve the question of adoption. In this connection a conclusion from the report of the Fortieth Executive Committee of the High Commisioner's Programme in which, inter alia, States called upon the UNHCR to promote the best legal protection for unaccompanied minors particularly with regard to the risks associated with irregular adoption was quoted. In addition, reference was made to several paragraphs of the United Nations High Commissioner for Refugees' Guidelines on Refugee Children which were devoted to this issue. In conclusion UNHCR stated that, with respect to adoption carried out for improper financial gain, it strongly concurred with the views expressed by the Sub-Commission that there can be no question of financial gain from adoption and that the High Commissioner would continue to approach the issue of the adoption of children in a cautious manner, insisting that proper safeguards and guarantees are respected and that adoption was not made for profit.

43. The reply from the European Community indicated that questions had been raised within that body about sending allegedly adopted Honduran children, who are physically handicapped, to Europe for the purpose of selling their organs, and other trafficking in babies for adoption within the Community countries. In reply to those questions, the European Commission had answered, inter alia, that it had received no information to the effect that transplants had been made in Europe using organs from Latin American children.

44. Information from the Hague Conference on Private International Law indicated that it was now considering the possibility of setting standards, which would be relevant to both members and non-members, to encourage and facilitate international co-operation and the protection of children in

respect of inter-country adoption. To prepare for this instrument on inter-country adoption it was foreseen, inter alia, that in addition to a special conference being convened in 1990 to hold initial discussions on the subject, the conclusions of which would serve as a preliminary draft, another special commission of experts would meet to attempt to draft the text of a convention and that a further special meeting may be held in 1992 to finalize the draft. A diplomatic conference would then take place at the Hague in early 1993. The Hague Conference presented in summary form the trends in the laws governing adoption and the identification of certain of the problems that would be dealt with in a future convention. Thus, it was related that the problems not sufficiently met by existing instruments concerned: (a) the need for the establishment of legally binding standards which should be observed in inter-country adoption and would address such matters as the circumstances under which inter-country adoption were appropriate and what law should govern consent and consultations other than those with respect to the adopters; (b) the need for a system of supervision in order to ensure that those standards were observed; (c) the need for the establishment of channels of communication between authorities in the countries of origin of the children and those countries where they live after adoption; and (d) the need for co-operation between countries of origin and destination.

45. INTERPOL indicated that with a view to obtaining the required information on adoption of children for commercial purposes, the General Secretariat had addressed a circular to member countries in January 1990. It was indicated that as of 20 February 1990, 31 replies had been received altogether. Most of the answers except for two were negative with some countries stating that adoption for commercial purposes was unknown as an offence under criminal law. In the reply from France, it was stated that the one case of illegal adoption reported to the authorities was now subjudice. In the answer from Yugoslavia no case had been registered in police records although according to unconfirmed reports reaching the police, Yugoslav children belonging to a nomadic ethnic group had been given for adoption in Italy in exchange for financial compensation.

46. In the reply from the Organization of American States (OAS) it was related that to date the Inter-American Commission had not published reports on the question of adoption for commercial practices. However, the OAS indicated that it was in the process of elaborating a treaty on forced disappearances, a section of which, draft articles 19 and 20, was to deal with the adoption of children of victims of forced disappearances.

D. Information received from non-governmental organizations

47. Information from non-governmental organizations centred on allegations of the practice of adoption for commercial purposes, the causes of this phenomenon and recommendations for preventive action.

48. Defence for Children International gave details of a report prepared by its Ecuadorian Section on the situation in Ecuador with regard to international adoptions in 1988. It being stated that the socio-economic situation, particularly the debt problem and high inflation, prevailing in that country had affected children especially and that the institutional arrangements for the care and protection of minors covered only 1.12 per cent of the population at risk and that a great many children were potential victims of "child-stealing" and "trafficking in minors". The information continued with a description of the adoption procedure in 1988 which in brief

Inter-American Convention on Conflict of Laws concerning the Adoption of Minors and the United Nations Convention on the Rights of the Child and that it hoped to accede to the Hague Convention on Civil Aspects of International Child Abduction.

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C. Information received from United Nations organs, specialized agencies and intergovernmental organizations

41. The Centre for Social Development and Humanitarian Affairs stated that the exploitative practice of child sale and traffic had been a matter of serious concern at the interregional preparatory meeting for the Eighth United Nations Congress on Prevention of Crime and Treatment of Offenders held in Vienna from 18-22 April 1988 and the five regional preparatory meetings held in 1989. The Eighth United Nations Congress was expected to examine innovative policy options on behalf of those young victims, in view of the clear need for action-orientated strategies to promote a more effective response on the part of juvenile justice systems and the machinery of justice as a whole at all levels.

42. The United Nations High Commissioner for Refugees drew attention to the subject of adoption and its relevance to the problem of unaccompanied minors. It was recognized that any durable solution for unaccompanied refugee children may involve the question of adoption. In this connection a conclusion from the report of the Fortieth Executive Committee of the High Commisioner's Programme in which, inter alia, States called upon the UNHCR to promote the best legal protection for unaccompanied minors particularly with regard to the risks associated with irregular adoption was quoted. In addition, reference was made to several paragraphs of the United Nations High Commissioner for Refugees' Guidelines on Refugee Children which were devoted to this issue. In conclusion UNHCR stated that, with respect to adoption carried out for improper financial gain, it strongly concurred with the views expressed by the Sub-Commission that there can be no question of financial gain from adoption and that the High Commissioner would continue to approach the issue of the adoption of children in a cautious manner, insisting that proper safeguards and guarantees are respected and that adoption was not made for profit.

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44. Information from the Hague Conference on Private International Law indicated that it was now considering the possibility of setting standards, which would be relevant to both members and non-members, to encourage and facilitate international co-operation and the protection of children in

guidelines for social workers with respect to international adoptions, especially when an element of commercial gain was involved. The working party would report on that specific area of concern to the social work profession in August 1990 in Buenos Aires, Argentina.

52. The International Federation Terre des Hommes (FITDH) stated that adoption for commercial purposes was not only making profit from an act which should be disinterested and free of charge, but in some cases helped to hasten the breakup of the social fabric by prematurely separating children from their families. Members of the FITDH preferred development aid to individual assistance. The Federation provided information on allegations of trafficking in children connected with adoption for commercial purposes. For example, it was stated that in Peru a network of traffickers had sought out children in the poorest neighbourhoods of Lima and that from a day centre run free of charge for the children of single mothers and poor families, children had simply disappeared, having been sold in Europe with false papers. Other allegations related to: South Korea, where, it was alleged conditions in the country favoured the practice of adoption for commercial purposes; Switzerland, details were given of a recent court case in Lausanne of the sale of Lebanese children by a Lebanese woman; and the United States, where some child placement agencies arranged adoption for commercial purposes but the State had no way of punishing their actions until there were a sufficient number of complaints against the agency.

53. FITDH offered numerous causes for adoption for commercial purposes which may be summarized as follows: in the case of adoptive parents, it was their inability to have a child combined with the lack of children available for adoption and the slowness of administrative and legal procedures for adopting that made them resort to illegal intermediaries. In addition, adoptable children were located a great distance away and the adoptive parents and their legal intermediaries lacked familiarity with the language and customs of the country of origin of the child, thus jeapordizing their efforts to deal with an honest agency. In the case of the biological parents, most of whom were from developing countries, the causes were, inter alia, poverty and lack of support, advice and education. In more than two thirds of cases, it was stated, children were given up by single mothers in both economic and social difficulty. For the illegal intermediaries, the motivation was the profit. Intermediaries could be lawyers, social workers, private clinics, doctors, etc., working individually or within an organized network. Inadequate efforts by social workers to find the parents of abandoned children, the kidnapping of children and the legal vacuum existing in certain countries were also considered factors contributing to the expansion of adoption for commercial purposes.

54. By way of conclusion, the FITDH offered the following suggestions to the Sub-Commission: the Convention on the Rights of the Child should be ratified; women's rights should be strengthened and promoted; civil registration procedures, frontier controls, monitoring systems for the prevention of illegal adoptions, etc., should, if necessary, be strengthened and extended; adoption abroad should be effective only with the co-operation of legally recognized intermediaries from the two countries concerned; entry visas should be refused for a child if the application is made by a person known to be trafficking in children and the offenders should be punished with appropriate

severity; awareness should be developed among prospective adoptive parents of the real situation of children in the Third World, that not all adoption methods are lawful and of the problems for the child if the adoption fails.

55. The Inter-Parliamentary Union drew attention to the conclusions and recommendations of the meeting of parliamentarians on "Rights of the Child, towards peace and development in Central America" held in Guatemala City from 1 to 3 December 1988, and in particular to recommendation 8 of the "Plan of Action" which was concerned with taking "measures to improve the laws and if necessary promote adequate action to prevent children from being victims of exploitation, especially in the process of adoption".

II. THE RECRUITMENT OF CHILDREN INTO GOVERNMENT AND NON-GOVERNMENTAL ARMED FORCES AND THEIR PARTICIPATION IN HOSTILITIES

A. Background

56. As the wording of resolution 1989/41 of the Sub-Commission specifically requested a report on the recruitment of children into the armed forces and their participation in hostilities, and because of limitation of space, other serious matters relating to the overall protection of children as members of the civilian population, the general effects and consequences of armed conflict and their impact on the survival and development of children and the special protection afforded to children within human rights instruments, per se, will not be addressed although mention will be made of rehabilitation measures for those children directly affected by armed conflict.

57. The various international instruments that provide for the special protection of children, in general and/or specifically, include: the Geneva Declaration on the Rights of the Child of 1924, the Declaration on the Rights of the Child of 1959, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 1974, the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally of 1986, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985, the Fourth Geneva Convention of 1949 and the Two Additional Protocols of 1977 to the 1949 Geneva Conventions as well as the 1989 Convention on the Rights of the Child.

58. The first two instruments to address the need to protect children who take part in hostilities were the Two Additional Protocols adopted on 10 June 1977. Both Additional Protocols contain specific references to the age at which children may be recruited into the armed forces. It may also be noted from the provisions within international humanitarian law that in those cases where children who have not attained the age of 15 years do take part in hostilities, whether they are prisoners of war or not, they should benefit from the special protection accorded to them by Article 77 of Protocol I which states, inter alia, that they be the object of special respect, protected against any form of indecent assault and because of their age or for any other reason the "Parties to the conflict shall provide them with the care and aid they require". Both Protocol I and Protocol II contain provisions relating to offences carrying the death penalty, specifying that it shall not be carried out on persons who were under the age of 18 years at the time of the offence (Protocol I, Article 77 and Protocol II, Article 6 (4)) (see para. 92).

59. In response to the comprehensive approach taken towards protecting children's rights during the drafting of the Convention on the Rights of the Child, a provision for the protection of children in armed conflict was extensively debated and incorporated. The exercise of drafting the Convention on the Rights of the Child served to focus attention on the interdependency of all human rights, international humanitarian law and other international standards as well as the need for greater co-operation and efforts to meet the requirements for improved implementation of the rights proclaimed and adopted.

60. The article of the Convention on the Rights of the Child relevant to the issue of the protection of children in armed conflict is Article 38, which states that:

(a) States Parties undertake to respect and to ensure respect for rules of humanitarian law applicable to them in armed conflicts which are relevant to the child;

(b) States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities;

(c) States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest;

(d) In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

61. At the time of its development there was a great deal of discussion as to whether the age of 15 years was an appropriate one for the recruitment of children in armed conflict. During the debate on the draft convention in the Commission on Human Rights and the General Assembly's Third Committee, various States gave their opinions on the Article's provisions as regards their preference for and future interpretation of the Article's contents with, inter alia, the age of recruitment of children into armed forces and military service, the level of protection it affords or should afford vis-à-vis existing instruments, the situation of children involved in national liberation struggles, the situation of Palestinian children and children in South Africa and the relevance of Article 41 of the Convention, which relates that nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in (a) the law of a State Party; or (b) international law in force for that State. (See E/CN.4/1989/48 and A/C.3/44/SR. 36 to 45.)

62. Despite the concerns expressed, as briefly mentioned above, it was the general view of States that Article 38 was to be welcomed as an addition to the Convention on the Rights of the Child.

63. In contrast to the appreciably wider coverage given to the issue of commercially-motivated adoptions, the issue of the recruitment of children into the armed forces and their part in hostilities has not attracted the attention of human rights bodies until very recently. The following paragraphs offer an indication of the extent to which this issue has been addressed.

64. The report of the Sub-Commission on Conscientious Objection to Military Service by Mr. Asbjørn Eide and Mr. Mubanga Chipoya stated (para. 10) that:

> "Attention has also been drawn to a related but different problem, namely that of children and young adolescents in armed forces. Even when the individual child does not object to such service, it is doubtful that

he can be sufficiently responsible to take such a decision, and in any case the use of children must be considered unacceptable. Since this is not a question of conscientious objection, it is not further dealt with in this report, and material has not been collected on the occurrence of the phenomenon. But in the recommendations it has been suggested that the Sub-Commission should consider action to be taken to follow up this problem". (See paras. 10 and 154 of E/CN.4/Sub.2/1983/30/Rev.1.)

65. At the United Nations Seminar on Ways and Means of Achieving the Elimination of the Exploitation of Child Labour in All Parts of the World, held in Geneva from 28 October to 8 November 1985, the special attention of the Seminar was drawn, inter alia, to the problems of children in armed conflicts as soldiers. "The Seminar was in complete agreement that these forms of child labour should certainly be considered as exploitative, and should be eliminated as soon as possible." (See para. 28 of ST/HR/SER.A/18.)

66. Moreover, according to the 1986 review papers of UNICEF on Children in Especially Difficult Circumstances, not only would the recruitment of children into the armed forces constitute a slavery-like practice, but also the very nature of military service was considered exploitative child work endangering directly the survival as well as the physical, emotional and social health and development of children. As exploitative child work it was regarded as intolerable and to be abolished. (See also UNICEF document E/ICEF/1986/CRP.3 on the Exploitation of working and street children and documents E/ICEF/1986/CRP.2, E/ICEF/1986/L.6 and E/ICEF/1986/L.3 on Children in especially difficult circumstances.)

67. The relationship between armed conflict and child refugees has also been extensively addressed by UNHCR. In its Guidelines on Refugee Children of 1988, guided as they are by the best interests of the child and family unity, priority issues are identified and guidelines presented for the practical steps Field Offices can take to address their needs. Within the section of the Guidelines on UNHCR action to promote and ensure the liberty of refugee children it detailed, inter alia, that measures were to be taken to ensure the safety of refugee children from being victims of military and armed conflict; the attention of national authorities of the concerned country of asylum and UNHCR Headquarters were to be drawn to any instances of the recruitment of children into armed forces, whether forced or voluntary, in supportive functions or on active combat duty; priority attention was to be given to the immediate treatment, recovery and rehabilitation of children who had suffered trauma due to torture, abuse or other violence; funding for such treatment may be made available through the United Nations Voluntary Fund for Victims of Torture in Geneva. A separate section of the Guidelines focusing on the Prevention and Treatment of Disabilities details, inter alia, that where individuals suffer disabilities related to their situation as refugees, such as injuries related to war, etc., appropriate rehabilitation services should be provided; the guidelines offered indicated, among other things, that community-based rehabilitation as advocated by WHO and experts in the rehabilitation field is the basic strategy for Field Offices.

68. At its 891st meeting, on 5 April 1989, the Human Rights Committee, established as the implementation body for the International Covenant on Civil and Political Rights, adopted a General Comment on Article 24, concerned with the rights of children. The General Comment states, inter alia, that:

"the reports submitted by States Parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to special protection ... Moreover, the Committee wishes to draw the attention of States Parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts ... The Covenant does not indicate the age at which the child obtains his majority. This is to be determined by each State Party in the light of the relevant social and cultural norms. However, the Committee notes that it should not be set unreasonably low and that in any case a State cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law". (See General Comment 17 (35) on Article 24 in document CCPR/C/21/Rev.1, p. 21.)

69. The issue of the recruitment and participation of children in hostilities had been brought to the attention of the Working Group on Contemporary Forms of Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities on several occasions.

70. In information forwarded to the Working Group on Contemporary Forms of Slavery it was indicated that following discussions of the documents relating to Children in Difficult Circumstances by the Executive Board of UNICEF, it was decided to further promote and build on existing programmes with Governments and non-governmental organizations for the benefit of children in difficult circumstances. Subsequently UNICEF in 1988, in collaboration with the University of Colombia, began work on the project "Children at War"; it was stated that information on the project would be made available at a later date. (See document E/CN.4/Sub.2/AC.2/1989/5/Add.2.)

71. In further information received by the Working Group on Contemporary Forms of Slavery in 1988 and 1989, points raised included the view that the conditions of service for children in armed services should be examined in the same way as the conditions of the child labourer, whether one believed that neither the child labourer nor the child soldier should exist in modern society. Therefore it was suggested that more research was required to reveal details of their conditions of service, including payment for military service, veteran's benefits, education and training for employment, treatment of child soldiers by their officers and aspects of military training. Several questions were also asked, in the information presented, as to the global condemnation of the extra-legal conscription of children under the age of conscription into the armed forces, the responsibility of the United Nations for discouraging the recruitment of minors into the armed forces, encouraging an agency or researcher to examine the conditions of service for children and youth under 18 serving in armies and guerrilla forces, and encouraging Governments to reintegrate child soldiers into society in an entirely civilian process. The view was also expressed that the manner in which young soldiers had been used in some conflicts had also caused widespread concern in that it was alleged that their youthful lack of experience had been exploited and they had been sent to the front-line in battle. (See E/CN.4/Sub.2/1989/39, paras. 93-103, E/CN.4/Sub.2/AC.2/1988/7, E/CN.4/Sub.2/AC.2/1987/WP.4 and para. 42 of E/CN.4/Sub.2/1983/27.)

B. Information received from Governments

72. In the main, information received from States on the subject of the recruitment of children into armed forces related details of national legislation as regards age of conscription, voluntary service, military training, deferment from military action and the involvement of women in military service.

73. With regard to the replies from States on the national legislation relating to recruitment age, the general conscription age for military service for male citizens was 18 years in China, Colombia, Dominican Republic, Finland, Sweden, Uruguay and the Ukrainian SSR. In Austria and Mexico every male citizen from the age of 17 was liable for military service, but the conscription age for regular service in Austria was 18. In the case of Tunisia, the age of required entry into military service was 20 or over, although citizens between the ages of 18 and 23 might enlist in the army if they had the necessary consent if under the age of 20, which is the age of majority in Tunisia. Saudi Arabia replied that compulsory recruitment into the armed forces did not exist in Saudi Arabia.

74. Details of the granting of deferment from military service were provided by Tunisia and the Ukrainian SSR on various grounds, such as education, physical disability and family circumstances.

75. Uruguay pointed out that persons under the age of 18 may receive pre-military instruction in primary, secondary, industrial and professional education establishments; however it was indicated that this provision had not been applied as Uruguay had not been involved in an armed conflict for more than a century. Information regarding the undertaking of studies in military or training institutions was provided by Mexico and the Ukrainian SSR.

76. In the reply from Mexico mention was made of the Colegio Militar (Military College) and of the Escuela Superior de Guerra (Higher School of War), which recruited young people who, on completing their education, automatically joined the Mexican armed forces, where they were required to complete several years of professional service in the field in which they had been trained; in the case of pupils who entered to prepare for the baccalaureate while still minors, they committed themselves to serving the State until they reached the age of majority.

77. Information forwarded from the Ukrainian SSR stated that citizens of the male sex who had expressed a desire to study in military training institutions might be admitted to such institutions provided that they reach 17 years of age in the year of admission for training. It was indicated that those citizens admitted to military training institutions were on active military service, were known as military school students, and that the obligations laid down for military personnel on fixed-term engagements applied to them.

78. With regard to volunteering to perform military service, several States indicated that provisions in the relevant law covered this possibility. Austria stated that persons who had reached the age of 17 and were liable for military service might volunteer to perform their term of service in advance (Section 15 of the Military Service Act). Finland stated that it was possible to volunteer for service at the age of 17. Iraq stated that Revolutionary Command Council decision 870 of 17 November 1986 stipulated that at the time of enlistment, at any military rank, a volunteer must not be under 14 or

over 25 years of age, and that the Military Service Act No. 65 of 1969, as amended, made no provision for the recruitment of children into armed forces. Uruguay supplied information regarding its reserve forces which indicated that no one under the age of 18 might be a member and that the Regular Army was also composed of volunteers 18 to 45 years old, under contract for a period of not less than one year, such contracts being renewable.

79. As to the involvement of women over the age of 18 in military service, information was forwarded by China and the Ukrainian SSR.

80. With regard to the recruitment of children in military service, China indicated that in line with its legislation on military service there was no question of children performing military service. The reply from Colombia stated that there were no children serving in the Colombian army. The Dominican Republic offered the information that its legislation did not provide for the recruitment of children into the government armed forces. Finland reported that a child should not become a conscript or participate in armed conflicts and that the best way to prevent this was for each State's legislation to prescribe the conscription of children. Iraq condemned the recruitment of children into armed forces for any reason whatsoever.

81. Mexico stated that as it had not been involved in armed conflict in the recent past, military recruitment of minors had not taken place in Mexico. Portugal's reply stated, inter alia, that in recent years children had been used in various conflicts, which had caused very profound and often irreparable physical, mental or moral harm in view of children's immaturity. No effort should be spared to prevent the participation of children in armed conflicts. Portugal also regarded it as necessary to strengthen the protection of the civilian population in general and of children in particular, one important step being the non-recruitment of children into armed forces.

82. Sweden stated that it welcomed the decision by the Sub-Commission in its resolution 1989/41 to give attention to the recruitment of children into armed forces, as well as the recognition by the Sub-Commission that in connection with Article 38 of the Convention on the Rights of the Child, no effort should be spared to prevent the militarization of children. Sweden also reiterated the points from its statement during the adoption of the Convention on the Rights of the Child in the General Assembly on 15 November 1989, namely that the Swedish Government was of the opinion that it should be incumbent upon all States to ensure that persons below the age of 18 years should not be recruited into armed forces and used as soldiers and that Sweden expressed its firm intention to continue with efforts to improve the standards with regard to the protection of children in armed conflict.

C. Information received from United Nations organs, specialized agencies and intergovernmental organizations

83. The replies from these organizations related, in large measure, to any operational activities which had taken account of the issue of children in armed conflict and to any reports of meetings which had addressed the issue from their particular field of concern.

84. Information from regional organizations in connection with the issue of disabilities was forwarded by the Economic and Social Commission for Western Asia (ESCWA). It was stated, inter alia, that the Conference on Capabilities

and Needs of Disabled Persons in the ESCWA region had recognized that prolonged armed conflicts such as the Iran-Iraq war, the Lebanese conflict and the intifadah in the occupied territories had all added to the gravity of the disability problem in the ESCWA region. Three background papers that had been presented at the Conference were forwarded for information; these had been described as studies carried out under the specific political and social conditions of the region and included statistics regarding age distribution of victims of armed conflicts and available rehabilitation programmes for various categories of disabled children in those countries. (See E/CSCWA/SD/89.WG.1/15, 22 and 24.)

85. The reply from UNHCR stated, inter alia, that with regard to the forcible recruitment of children, UNHCR's position was that no child (as opposed to any child under 15 years) should be recruited. UNHCR had noted with concern an increase in instances involving the recruitment of refugee children into the belligerent forces. Such recruitment, it was stated, occurred in several countries of Africa, Asia and Latin America and involved many thousands of refugee children. It was carried out not only by State armies but also by irregular armed groups involved in combat either in the country of asylum or against the authorities of the country of origin; refugee children were required to carry out various tasks when enrolled, which included carrying equipment and food, planting mines and participating directly in fighting. UNHCR stated that this practice was deplorable and unacceptable from all perspectives; that it placed the life and integrity of the child at risk and was contrary to accepted notions that children must not take a direct part in hostilities and that refugees were civilians whose camps and settlements had a strictly humanitarian character. UNHCR reported that it had taken several steps with a view to preventing the forced recruitment of refugee children and ameliorating the condition of refugee children in general. Notably, in August 1988, UNHCR had issued a set of guidelines on refugee children which contained the policies guiding UNHCR's action in these areas and indicated concrete steps that could be taken to ensure that the needs of refugee children were met. The guidelines instructed UNHCR Field Offices to report all incidents involving the recruitment of refugee children into any armed forces; UNHCR had already intervened in a large number of situations with a view to preventing the forced recruitment of refugee children, most recently within the framework of the fortieth session of the Executive Committee of the High Commissioner's Programme, "States called upon UNHCR to promote the best possible legal protection of unaccompanied minors, particularly with regard to forced recruitment into armed forces ...".

86. ILO stated that as regards programmes for the rehabilitation of children who were victims of armed conflict, it was expected that a number of such children would be included among persons benefiting from two projects currently being undertaken by ILO, the Rehabilitation Centre for Disabled Mothers and Children in Kabul (Afghanistan) and the Human Resources Development Centres for Afghans in Pakistan, which include a sub-project on vocational rehabilitation and employment of disabled Afghans in Pakistan.

87. UNESCO forwarded the report (SHS-88/CONF.6046) of a meeting which had been organized in 1988 in collaboration with the Costa Rican Commission for Co-operation, entitled "International meeting of experts on action in the field of education and information concerning children in situations of armed conflict". Among the conclusions arrived at it was stated, inter alia, that children were increasingly being militarized and employed as combatants; that

in many cases children had been forced to engage in military or para-military activities while in other cases food shortages, the lack of educational opportunities and family support had left them with few alternatives to enlisting in the armed forces to meet their physical and emotional needs. The psychological and psychiatric effects of armed conflict on the child's development were also noted. In general little was known of the psychological needs of children who were refugees from, or victims of, armed conflict and preventive and curative action was practically non-existent. In order to provide adequate protection and assistance to children who were victims of armed conflict, an adequate programme of assistance and follow-up for their rehabilitation was required. On the matter of education, the fundamental importance of creating and developing an awareness of human rights teaching was raised, in addition to the informing and teaching of international humanitarian law at all levels of formal and non-formal education, particularly to military and para-military personnel in government armed forces and rebel groups. On the basis of the debate and discussions during the meeting, the recommendations forwarded by the group concentrated on information campaigns and other efforts to promote better implementation, awareness and teaching of human rights and international humanitarian law. Appropriate programmes for achieving such results should be prepared for all concerned parties, whether victims of armed conflict or members of the armed forces. Emphasis was also placed on initiating research programmes on the effects of armed conflict on child victims. Finally, recommendations called for improvements in co-ordination and co-operation between various parties at different levels, such as interaction between field workers and researchers, multi-disciplinary action in coliaboration with governments and non-government institutions and follow-up meetings to be encouraged from all interested parties.

D. Information received from non-governmental organizations

88. Replies received to the request for information from non-governmental organizations covered, inter alia, information relating to allegations on the use of children in armed conflict, measures being taken to rehabilitate those children affected by armed conflict and recommendations for future action.

89. Among the information forwarded by the Friends World Committee for Consultation (Quakers) were various monthly issues, covering the years 1987-1989, of the "Children bearing military arms" documents by Dorothea Woods. The contents of this material focused on news media and other reports and articles on the involvement of children in armed conflict, from supportive functions to direct combat, the general impact of war on children and the militarization of children. In addition, it detailed the efforts being undertaken to address these matters within the non-governmental community and international organizations. This information was also supplemented with details of children's involvement in wars throughout history. Statements by FWCC at United Nations meetings were also forwarded, drawn in part from the monthly material previously mentioned. It was stated that some of the recruitment of children into armed forces had slavery-like aspects, as for example forced recruitment, kidnapping and street round-ups; that many children had been killed or maimed as a direct result of participating in armed conflicts, others languished as prisoners of war and some of those child prisoners of war had been sujected to interrogation, beatings and torture. From information received in the issue entitled "Children at war some outstanding problems in 1989" (similar information was presented at the 14th session of the Working Group on Contemporary Forms of

Slavery), it was stated that with the cease-fire in the Gulf War in 1988, the number of child soldiers in the world had been cut in half and it was hoped that peace negotiations on Angola, Kampuchea, Nicaragua, Sri Lanka, the Sudan, Western Sahara and Namibia would diminish the number of children at war even further. Regarding the situation of child prisoners of war, it was stated that the Additional Protocols to the Geneva Conventions of 1949 made provision for child soldiers who were taken prisoner of war and that they benefited from the general provisions for prisoners of war but they were to be quartered separately. The information stated, inter alia, that child soldiers who were taken prisoner faced various problems, depending on whether the warring parties had ratified the Additional Protocols, were involved in peace negotiations, gave priority to this issue and permitted the International Committee of the Red Cross to intervene in a civil conflict. Two problems had to be faced concerning the improvement of the conditions of the child soldier and the elimination of the use of the child soldier; these consisted of the forced and illegal recruitment of children for military action and the situation of child prisoners of war. Information was also forwarded with regard to the rehabilitation of children in the aftermath of conflict, indicating that non-governmental organizations had co-operated with governments to return children to school and that voluntary teachers had run schools. In other cases it was stated that local organizations for those disabled as a result of armed conflicts had been developed and that these organizations had tried to improve transportation for the handicapped, remove architectural barriers and prepare legislation to protect the rights of the disabled. Other points related to the Convention on the Rights of the Child; it was stated that the Convention does not contain any provision for constraints on the voluntary enlistment of youth under 18 or for countering the kidnapping of youth impressed into the armed forces.

90. Information relating to the statements of Governments during the adoption of the Convention on the Rights of the Child was forwarded. Other material presented by the organization included the booklet by the ICRC entitled Children in Situations of Armed Conflict, which in its conclusions stated that there was:

> "no denying that children continue to be the innocent victims of armed conflicts. In order to bring their suffering to an end, to ensure that they are no longer wounded or killed by bombs and mines, thrown in prison, ill-treated, separated from their families or recruited into the armed forces, it is of prime importance that the international community is aware of the extent of the problem and ensures the respect of provisions already in force. Responsibility for the application of provisions providing special protection to children and indeed for all provisions of international humanitarian law, is collective. It is the duty of the States parties to the Geneva Conventions of 1949 and to the Additional Protocols of 1977 to respect and ensure respect for these standards".

From proposals by the Friends World Committee for Consultation it was suggested that the Sub-Commission should appeal to States on humanitarian grounds to permit international organizations access to child prisoners of war; that it was necessary for the United Nations to monitor the military use of children and to establish guidelines for international response to States which are a party to the utilization of children for military purposes and

that a special rapporteur should be appointed to study the recruitment of children into government and non-government armed forces and their participation in hostilities.

91. The International Catholic Child Bureau presented information from its "Progress report on action projects for ICCB Council meetings". It was stated that these research projects focused on children who were refugees as a result of armed conflict and that the methodology adopted for interventions was community-based. One of the aims of the projects was that the concrete strategies suggested for dealing with the problems that arose were based upon both traditional practices and methods considered effective in other similarly affected communities. Of the projects underway, one related to the psycho-social needs of Salvadorian mothers and children. Others included the completion of a project in Zambia where a consultant had worked at a refugee settlement for Mozambican refugees. Information was also provided on three recent meetings organized because of the interest shown on the applicability of the methodology which the organization implemented within the area of refugee mental health and also its appropriateness and responsiveness to emergency relief work in natural and man-made disasters. A number of publications were in preparation following on from the organization's activities.

92. The reply from ICRC stated, inter alia, that the recruitment of children and their participation in hostilities were unacceptable practices, and that the problem deserved our full attention. Details of the relevant provisions within article 77, (para. 2) of Protocol I and article 4 (para. 3(c)) of Protocol II were quoted. Article 77 (para. 2) of Protocol I specified that in an international conflict:

> "The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest".

In this regard, it was stated that three obligations incumbent on the Parties in an international conflict flow from article 77 (para. 2), namely: an absolute ban on recruiting and permitting the recruitment of children under the age of 15 into the armed forces; a recommendation to give priority to those who are oldest when recruiting children between the ages of 15 and 18; and also a duty to take all feasible measures in order that children do not spontaneously take part in hostilities. With reference to non-international armed conflict, it was stated that: article 4 (para. 3 (c)) of Protocol II, while based on article 77 (para. 2) of Protocol I, imposes stricter obligations on the Parties to the conflict, in that not only is direct participation in hostilities prohibited, so too is any act of indirect participation, such as the transmission of military information, the transportation of arms, ammunition or war equipment, etc. In non-international armed conflict, article 4 (para. 3 (c)) of Protocol II specifies that: "Children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities." In conclusion it was stated that despite the existence of these provisions, children continue to be enrolled in armed forces and to participate in hostilities and that measures should be taken to ensure compliance with the existing provisions.

93. Information from the International Federation of Social Workers dwelt, among other things, on its willingness to continue to involve itself in the issues of children bearing arms and the age of recruitment of young persons into armed forces.

94. The Inter-Parliamentary Union drew attention to a previously published document (E/CN.4/1989/54 of 19 January 1989) containing the conclusions and recommendations of a workshop meeting in Guatemala entitled "The Rights of the child, towards peace and development in Central America", at which it was recommended, among other things, that the process of the ratification of the Two Additional Protocols to the 1949 Conventions be expedited, that the concept of "Children as a Zone of Peace" be promoted in Central America, and that the creation of a Central American fund for technical and financial co-operation for the care of children affected by armed violence be supported by the international community.

III. CONCLUSIONS

95. It should be mentioned that the convenience of dividing this report into two chapters is not to suggest that points of overlap between the two issues do not exist. From this report it may be discerned that elements from, among other things, the UNHCR Guidelines on Refugee Children (particularly pp. 7-10 and 27-32) and the newly adopted Convention on the Rights of the Child relate to these issues. (See also the conclusion (h) from page 11 of the Report of the fortieth session of the Executive Committee of the Programme of the UNHCR, document A/AC.96/737.)

96. With the adoption of the Convention on the Rights of the Child by the General Assembly on 20 November 1989, which, up to 10 May 1990, 81 States had signed and 5 States had ratified or acceded to, it is to be hoped that the Convention will soon enter into force and its implementation body, the Committee on the Rights of the Child, will be set up thereafter. According to article 45 of the Convention on the Rights of the Child, it should be noted that in order to foster the effective implementation of the Convention and to encourage international co-operation in this field, a system of studies on specific issues relating to the rights of the child has been provided for. In this regard the complementary mechanisms of studies by United Nations human rights bodies and the future Committee on the Rights of Child should be recognized.

97. From the information forwarded for the compilation of this report with regard to commercially-motivated adoptions, and taking into consideration that three previous reports of the Secretary-General on the sale of children had touched upon this issue, it is to be hoped that a more informed picture of the subject has developed which may be of value, inter alia, to various United Nations human rights bodies and to the Special Rapporteur who will prepare a report on the matter of the sale of children for presentation at the forty-seventh session of the Commission on Human Rights, in 1991, pursuant to Sub-Commission resolution 1989/42 and Commission on Human Rights resolution 1990/68.

98. It should also be noted that the draft programme of action for the prevention of the sale of children, child prostitution and child pornography, as recommended by the Working Group on Contemporary Forms of Slavery at its fourteenth session, in 1989, and subsequently endorsed by Sub-Commission resolution 1989/42 and Commission on Human Rights resolution 1990/67, has been transmitted to Governments, specialized agencies, intergovernmental organizations and non-governmental organizations for their comments and that an analytical summary of the replies received would be presented to the Commission at its forty-seventh session, in 1991.

99. In addition, the proposed preparation of a private international law agreement on international adoption, not forgetting the regional, national and bilateral agreements and legislation on this matter, demonstrates some of the most recent efforts being made to protect children against commercial adoption practices.

100. As to the recruitment of children in armed conflict and their participation in hostilities, considering the content of the information presented, the Sub-Commission may wish to consider whether further study on this matter should be undertaken.

101. Resolutions of the Commission on Human Rights and the Sub-Commission with a bearing on the issue of human rights and armed conflict include Sub-Commission resolution 1989/24 and Commission on Human Rights resolution 1990/66, concerned as they are with education in the international law of human rights and humanitarian law applicable in armed conflicts. It was stated in these resolutions that a report by the Secretary-General would be prepared to review replies received to the request that information be forwarded on the scope of education provided to members of the police and armed forces.

102. In addition, Commission on Human Rights resolution 1990/58 on advisory services in the field of human rights requested, inter alia, the Secretary-General to explore yet further the possibilities offered by co-operation between the Centre for Human Rights and United Nations bodies, such as the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees, as well as the International Committee of the Red Cross, in the development of strategies for the setting up or the strengthening of national and regional infrastructures for the promotion and protection of human rights and fundamental freedoms and the planning, execution and evaluation of specific projects.

103. Furthermore, in Commission on Human Rights resolution 1990/72 on the development of public information activities in the field of human rights, including the World Public Information Campaign for Human Rights, it was stated, inter alia, that the Commission on Human Rights emphasized the need for the United Nations to harmonize its public information activities in the field of human rights with organizations such as the International Committee of the Red Cross and the Office of the High Commissioner for Refugees in relation to the dissemination of information on international humanitarian law and, with regard to education for human rights, the United Nations Educational, Scientific and Cultural Organization.

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CONTEMPORARY FORMS OF SLAVERY

The adoption of children for commercial purposes and the recruitment of children into government and non-governmental armed forces

Report of the Secretary-General prepared pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1989/41

CONTENTS

		Paragraphs	Page
	Introduction	1 - 8	1
Chapter			
I.	THE ADOPTION OF CHILDREN FOR COMMERCIAL PURPOSES	9 - 55	3
	A. Background	9 - 24	3
	B. Information received from Governments ...	25 - 40	7
	C. Information received from United Nations organs, specialized agencies and intergovernmental organizations	41 - 46	9

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CONTENTS (continued)

		Paragraphs	Page
	D. Information received from non-governmental organizations	47 - 55	10
II.	THE RECRUITMENT OF CHILDREN INTO GOVERNMENT AND NON-GOVERNMENTAL ARMED FORCES AND THEIR PARTICIPATION IN HOSTILITIES	56 - 94	14
	A. Background	56 - 71	14
	B. Information received from Governments..	72 - 82	18
	C. Information received from United Nations organs, specialized agencies and intergovernmental organizations	83 - 87	19
	D. Information received from non-governmental organizations.....	88 - 94	21
III.	CONCLUSIONS	95 -103	25

READEX FICHE

Introduction

1. The Sub-Commission in its resolution 1989/41 of 1 September 1989 requested the Secretary-General to submit to the Sub-Commission, at its forty-second session, a report on the adoption of children for commercial purposes and on the recruitment of children into government and non-governmental armed forces and their participation in hostilities, taking into account the comments of Governments, and further information received by him.

2. Pursuant to this resolution, the Secretary-General, on 24 November 1989 addressed requests to Governments, United Nations organs, specialized agencies, intergovernmental organizations and non-governmental organizations for information to facilitate the compilation of his report.

3. By 11 June 1990 replies had been received from the following States: Austria, the Bahamas, China, Colombia, Dominican Republic, Finland, Iraq, Mexico, Philippines, Portugal, Saudi Arabia, South Africa, Sweden, Tunisia, Ukrainian Soviet Socialist Republic and Uruguay.

4. Replies were also received from the following: United Nations organs - Economic Commission for Africa, Economic Commission for Latin America and the Caribbean, Economic and Social Commission for Western Asia, United Nations Centre for Social Development and Humanitarian Affairs, United Nations Development Programme, United Nations High Commissioner for Refugees and the United Nations University; specialized agencies - International Labour Organisation, Food and Agricultural Organization, United Nations Educational, Scientific and Cultural Organization; intergovernmental organizations - Commission for the European Communities, Hague Conference on International Private Law, International Criminal Police Organization, Organisation for Economic Co-operation and Development and the Organization of American States.

5. The following non-governmental organizations submitted information: Christian Children's Fund, Inc., Defence for Children International, Friends World Committee for Consultation (Quakers), International Catholic Child's Bureau, International Federation of Social Workers, International Federation of University Women, International Federation Terre des Hommes and the Inter-Parliamentary Union.

6. Pursuant to the mandate, the Secretary-General deemed it appropriate to divide the present report into two sections. Thus the first part of the report addresses matters pertaining to the adoption of children for commercial purposes while the second part relates to the subject of recruitment of children into government and non-governmental armed forces and their participation in hostilities.

7. The replies received to the request for information being few in number but detailed and in view of the wide range of the subject-matter, this report does not presume to be comprehensive. It is rather the intention of the Secretary-General to submit information on the various views presented as a contribution to furthering understanding of the recent developments on

children's issues with regard to the adoption of children for commercial purposes and children in armed conflict. (The full text of all information received is available for consultation in the files of the Secretariat).

8. In the preparation of this report, the Secretary-General has also taken into account the information sent to him as well as that available within previously published documents of the United Nations. Any additional information will be contained in an addendum to this document.

I. THE ADOPTION OF CHILDREN FOR COMMERCIAL PURPOSES

A. Background

9. A variety of social and economic factors have led to the evolution of adoption as a global phenomenon with a myriad of, among other things, administrative and legal implications requiring greater attention at all levels.

10. Prevention of the adoption of children for commercial purposes, mainly through the medium of inter-country adoption has been addressed by various organs of the United Nations, international human rights instruments, regional and bilateral agreements and standards as well as within national law and the field of private law. This process is still continuing.

11. Since the 1960s serious concern has been repeatedly expressed by the United Nations for protective measures for children affected by inter-country adoption. In 1960 a European Seminar on Inter-country Adoption was convened in Leysin, Switzerland, under the auspices of the United Nations, and the way was paved for further regional and international efforts. At the seminar, recommendations were made regarding national and international action to assist in overcoming the legal difficulties arising from inter-country adoption, particularly where adoptions were subject to domestic laws. To settle such discrepancies two remedies were envisaged: firstly, to make adoption law uniform through international conventions and this was achieved by the European Convention on the Adoption of Children concluded on 24 April 1967; secondly, to reach international agreement on the essential points of conflict (jurisdiction, applicable law) in order to guarantee the international recognition of adoptions and this was reflected in the Hague Conference Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoption of 15 November 1965. For further information in this regard see UN/TAO/SEM/1960/Rep.2 and the Report of the Secretary-General on the Convening of a United Nations Conference for an International Convention on Adoption Law, E/CN.5/504, in which it was stated, inter alia, that few countries provide adequate standards for the protection of children in inter-country adoption, and repeated the conclusions of the Leysin Seminar on Inter-country Adoption.

12. On the recommendation of the Commission for Social Development, having considered the above-mentioned report of the Secretary-General, the Economic and Social Council in resolution 1925 (LVIII) of 6 May 1975 requested the Secretary-General to convene a group of experts to prepare, inter alia, a draft declaration of social and legal principles relating to adoption and foster placement of children nationally and internationally. On the basis of the general exchange of views on the subject, the Group adopted a draft declaration (see ST/ESA/99).

13. The various studies, meetings and international conferences on adoption and foster placement culminated in the General Assembly's adoption, without a vote, on 3 December 1986 of resolution 41/85 on the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.

14. The Declaration of 1986 contains three sections: General Family and Child Welfare, Foster Placement and Adoption. In connection with international adoption, the Declaration's articles 17 to 24 provide for, among other things, the following:

(a) Inter-country adoption where a child cannot in any suitable manner be cared for in the country of origin, and the establishment of policy, legislation and effective protection of children involved in inter-country adoption;

(b) Policies and laws for the prohibition of abduction and of any other act of illicit placement of children;

(c) Placements to be made through the competent authorities, and in no case to result in improper financial gain for those involved;

(d) Prevention of inter-country adoption before it has been established that the child is legally free for adoption;

(e) The legal validity of the adoption to be assured in each of the countries involved and all due weight to be given to both the law of the State of which the child is a national and the law of the State of which the prospective parents are nationals, in this connection due regard to be given also to the child's cultural and religious backgrounds and interests.

15. In contrast to the 1986 Declaration, the 1989 Convention on the Rights of the Child provides for implementation mechanisms through the Committee on the Rights of the Child. Article 21 in particular relates directly to the issue of adoption and provides for special safeguards for the child in cases of adoption, where the system is permitted and recognized, especially with regard to ensuring that placement in inter-country adoption does not result in improper financial gain. The text of article 21 reads as follows:

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

16. This Convention on the Rights of the Child was prepared by a drafting group of the Commission on Human Rights from 1979 to 1989 and was adopted without a vote by the General Assembly in resolution 44/25 of 20 November 1989.

17. It should be noted therefore that parallel to the study of adoption practices as a social phenomenon, human rights bodies, particularly the Working Group on Contemporary Forms of Slavery, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights have considered the commercial aspects of adoption practices within, inter alia, the ambit of the sale of children.

18. In the Updated Report on Slavery, E/CN.4/Sub.2/1982/20, prepared by the Special Rapporteur, Mr. Ben Whitaker, paragraph 74 stated that "Growing concern is being expressed at the separate practice of the sale of children for adoption, generally from developing to advanced countries." Within the Report on the Exploitation of Child Labour prepared by the Special Rapporteur, Mr. Abdelwahab Bouhdiba (E/CN.4/Sub.2/479/Rev.1), it was stated "that in at least three cases the exploitation of child labour is no less than a flagrant crime which violates the United Nations Charter, the principles of the Charter and the Universal Declaration of Human Rights, and the most elementary principles of morality and all positive laws. Energetic repressive reaction is called for in these cases, namely: Sale and similar practices (serfdom, bond-service, fake adoption, abandonment);... In these cases and as a matter of priority, there should be concerted action by the International Criminal Police Organization (INTERPOL) and increased pressure on States condoning such practices, since here it is not a matter of restricting such practices but putting a stop to them." Moreover, Mr. Fernand-Laurent, the Special Rapporteur for the Report on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, wrote in paragraph 43 of his report (E/1983/7) that, inter alia, "a report on the causes and implications of the sale of children, including commercially motivated and especially transnational adoptions should be prepared" in accordance with resolution 1982/15 of the Sub-Commission. Reports and notes were thus prepared by the Secretary-General on the Sale of Children and are contained in E/CN.4/Sub.2/AC.2/11 of 1977, E/CN.4/Sub.2/1987/28, E/CN.4/Sub.2/1988/30 and E/CN.4/Sub.2/1989/38.

19. Most recently, activities relating to the subject of the sale of children, having constituted part of the main theme of the Working Group on Contemporary Forms of Slavery's agenda of 1989, figured not ably in resolutions adopted by the Sub-Commission in 1989 and the Commission on Human Rights in 1990. It may be useful at this point to make mention of certain of the material presented to human rights bodies which relate to the issue of adoption.

20. The report, E/CN.4/Sub.2/1988/19, on Prevention of the Disappearance of Children prepared by Mr. Theo van Boven for the Sub-Commission was mainly concerned with the fate of children who disappeared from Argentina between 1976 and 1984. Under the sub-heading, "The moral dangers faced by children taken away from their families", extracts from paragraphs 38 and 39 give details of a ruling handed down by an Argentinian judge, in which it was stated that: "Cases such as the one I am trying, in which a newborn child is treated as a 'thing' which may be disposed of at will, once and for all, are, as far as the persons responsible are concerned, part of the ransacking and looting of the homes they destroyed, but there can be no possiblity of regarding as a mitigating circumstance the fact that the child might have been given good care, luxury and even affection, since false pretences and treatment to which the child was subjugated may be equated with slavery or something worse, since a slave is at least allowed to know where he came from." The report continued: "the ruling goes on to explain that cases of the appropriation of missing children cannot be compared to adoption, which is done on the basis of ethical principles, without trickery, and involves the free and conscious cession of paternity rights, without violence or any compulsory break in family ties, whereas the situation with which we are dealing, which is surrounded by fraud and forgery and in which there is no law or truth, but only the absolute power of the abductors, undermines what should be a parent-child relationship, with the resulting damage to the child's psyche and to society as a whole...".

21. In paragraph 51 of a report on Guatemala, E/CN.4/1989/39, undertaken by the Expert of the Commission on Human Rights, Mr. Hector Gros Espiell, it was written that "trafficking for the purpose of adoption was the most prevalent (form of trafficking in children) and was currently causing the greatest concern to the Guatemalan authorities. The existing law on adoption was described by the expert as outdated, the report subseqently noted that the Congress of the Republic was studying a bill on adoption which had been drafted in co-operation with the Supreme Court of Justice and that the new adoption bill recommended that authority in child adoption cases be vested in the family courts. Other problems noted in the report emanated from, inter alia, the lack of supervision by the State of the children's homes or foster homes where most adoptable children are housed, and the power of notaries to give final authorization for adoption.

22. From the report of the Working Group on Contemporary Forms of Slavery, E/CN.4/Sub.2/1989/89, it may be noted that Defence for Children International stated that it had carried out a comprehensive study, in co-operation with the Government of Argentina on the occurrence of the sale of children in Argentina.

23. Commenting on this study, the Observer for Venezuela, in paragraph 22 of E/CN.4/Sub.2/1989/39, "congratulated the Argentinian Department for Child Protection, considered that the causes of the traffic in children for adoption were universal and, in particular noted that the conclusions of the study recommending that one way of combating the traffic in children for adoption could be to review national legal systems in order to adjust them to present adoption needs."

24. According to paragraph 42 of the report of the fourteenth session of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1989/39) the Observer for Brazil drew attention to a document prepared by Defence for Children International entitled "Protecting Children's Rights in International

Adoptions" which examined different aspects of the issue, specifically linking the problems of abandoned children, international adoption and child trafficking in a developing and deeply indebted country, such as her own.

B. Information received from Governments

25. Despite the limited number of replies from Governments, the information forwarded was extremely detailed and valuable.

26. The fundamental importance of only considering adoption when it was in the best interests of the child was emphasized repeatedly in the replies from States. As an indication of the protection afforded to children in adoption practices, the provisions of national legislation, regional and international standards, existing and in preparation, were referred to. Additional information on the existence or non-existence of such practices was offered.

27. Commentaries received from the majority of Governments, including Colombia, Finland, Iraq, Mexico, Sweden, Tunisia and Ukrainian SSR pointed to the juridical and administrative procedures on adoption existing in their countries. Finland, Iraq and Ukrainian SSR gave information about the examination of the suitability and qualifications for adoption and Finland indicated that it offered adoption guidance for adoptive parents.

28. Colombia, Dominican Republic, Finland, Iraq, Mexico and Sweden and Ukrainian SSR stated in their replies that adoption was only permitted in the case of minors. In the case of Finland it was stated that a child who had attained the age of 12 could not be adopted against his/her consent.

29. Replies from Iraq, Tunisia and the Ukrainian SSR also gave details concerning the revocation of an adoption, if adoption were not, inter alia, in the best interests of the child or the adoption had been found to be irregular in some respect.

30. Austria stated that no cases had been reported of children being adopted for commercial purposes.

31. Colombia stated that adoption of children for commercial purposes was banned under Colombian law. Furthermore, criminal penalties had been introduced for any persons who promoted or carried out adoptions of minors without satisfying the appropriate legal requirements.

32. The Dominican Republic in its reply stated that, according to its Civil Code, adoption is provided for if it is to the benefit of the minor, but not for commercial purposes.

33. Finland's Adoption Act Section 3 specifically prohibited adoption of a child against compensation or promised compensation. It was further stated that there were no legal prerequisites in Finland for adopting a child or using the child for commercial or illegal purposes. In its reply Finland also made reference to the Child Custody and Right of Access Act and the Child Welfare Act in which it was prescribed, among other things, that the child shall be ensured good care and upbringing as well as appropriate protection and supervision and shall not be subject to corporal punishment. In this regard, it was stated, that the Ministry of Social Affairs and Health

considered that adoption of a child for reasons other than in order to ensure his or her upbringing should be prohibited by means of international agreements as well as by the legislation of each State.

34. Iraq stated that it condemned all forms of child adoption for commercial or employment related purposes as inhuman practices.

35. The reply from Portugal indicated that article 21 of the Convention on the Rights of the Child is modelled closely on the wording of the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, and reinforces the protection of the child in inter-country adoption. In this connection it was mentioned, among other things, that the relevant provision relating to inter-country adoption and measures to ensure that placement did not result in improper financial gain for those involved in it, namely the competent authorities, the natural parents and the legal guardians, was an important step. It would prevent the very situation in which adoption may constitute, not a solution safeguarding the child's welfare, but an apparently lawful means of concealing a traffic in which the child is made a source of profit and an item of concealed trade. It was also indicated that every State now had a duty to establish adoption procedures which would best protect the child's interests.

36. It was indicated by Sweden that, according to chapter 4, section 6, of the Code relating to Parents, Guardians and Children, an application for adoption may not be granted if any of the parties involved made or promised remuneration.

37. The concept of adoption for commercial ends, it was stated in the reply from the Ukrainian SSR, was alien to Soviet legislation.

38. Mexico in its reply stated that cases of adoption of children for commercial ends had been recorded in Mexico. It was also mentioned that there was evidence that adoption was commonly used as a legal pretext for adopting minors abroad. Further it was regarded as unfortunate that not all adoptions were made in accordance with the law and that huge numbers of potential parents from abroad applied to unauthorized agencies undertaking to provide children in exchange for payment. It was stated that the unlawful ends for which Mexican minors were adopted included exploitation of their labour, sexual exploitation, sale of children for profit and even sale of organs, all of which were regarded as constituting unlawful trafficking in minors.

39. Measures taken by Mexico at the national and international levels in response to the existence of commercially motivated adoption practices were outlined. It was stated that the adoption of minors in Mexico was governed by the local legislation of each state, which accounted for a lack of co-ordination where international adoptions were concerned and that a bill had been drawn up laying down regulations pursuant to article 4 of the Constitution, which, if adopted by Congress, would provide a basis for harmonizing standards relating to international adoption. Moreover, an information campaign was being carried out to advise people that in Mexico the National Scheme for the Comprehensive Development of the Family (DIF) was the sole specialized agency authorized to handle the adoption of minors either by Mexicans or by foreigners, who had met the necessary legal and institutional requirements. Also at the international level, Mexico had signed the

Inter-American Convention on Conflict of Laws concerning the Adoption of Minors and the United Nations Convention on the Rights of the Child and that it hoped to accede to the Hague Convention on Civil Aspects of International Child Abduction.

40. Austria and Mexico in their replies referred to their active involvement in the present efforts, within the framework of the Hague Conference on International Private Law, for the preparation of a future global adoption agreement which Austria stated would deal in particular with the problems of children from the Third World.

C. Information received from United Nations organs, specialized agencies and intergovernmental organizations

41. The Centre for Social Development and Humanitarian Affairs stated that the exploitative practice of child sale and traffic had been a matter of serious concern at the interregional preparatory meeting for the Eighth United Nations Congress on Prevention of Crime and Treatment of Offenders held in Vienna from 18-22 April 1988 and the five regional preparatory meetings held in 1989. The Eighth United Nations Congress was expected to examine innovative policy options on behalf of those young victims, in view of the clear need for action-orientated strategies to promote a more effective response on the part of juvenile justice systems and the machinery of justice as a whole at all levels.

42. The United Nations High Commissioner for Refugees drew attention to the subject of adoption and its relevance to the problem of unaccompanied minors. It was recognized that any durable solution for unaccompanied refugee children may involve the question of adoption. In this connection a conclusion from the report of the Fortieth Executive Committee of the High Commisioner's Programme in which, inter alia, States called upon the UNHCR to promote the best legal protection for unaccompanied minors particularly with regard to the risks associated with irregular adoption was quoted. In addition, reference was made to several paragraphs of the United Nations High Commissioner for Refugees' Guidelines on Refugee Children which were devoted to this issue. In conclusion UNHCR stated that, with respect to adoption carried out for improper financial gain, it strongly concurred with the views expressed by the Sub-Commission that there can be no question of financial gain from adoption and that the High Commissioner would continue to approach the issue of the adoption of children in a cautious manner, insisting that proper safeguards and guarantees are respected and that adoption was not made for profit.

43. The reply from the European Community indicated that questions had been raised within that body about sending allegedly adopted Honduran children, who are physically handicapped, to Europe for the purpose of selling their organs, and other trafficking in babies for adoption within the Community countries. In reply to those questions, the European Commission had answered, inter alia, that it had received no information to the effect that transplants had been made in Europe using organs from Latin American children.

44. Information from the Hague Conference on Private International Law indicated that it was now considering the possibility of setting standards, which would be relevant to both members and non-members, to encourage and facilitate international co-operation and the protection of children in

respect of inter-country adoption. To prepare for this instrument on inter-country adoption it was foreseen, inter alia, that in addition to a special conference being convened in 1990 to hold initial discussions on the subject, the conclusions of which would serve as a preliminary draft, another special commission of experts would meet to attempt to draft the text of a convention and that a further special meeting may be held in 1992 to finalize the draft. A diplomatic conference would then take place at the Hague in early 1993. The Hague Conference presented in summary form the trends in the laws governing adoption and the identification of certain of the problems that would be dealt with in a future convention. Thus, it was related that the problems not sufficiently met by existing instruments concerned: (a) the need for the establishment of legally binding standards which should be observed in inter-country adoption and would address such matters as the circumstances under which inter-country adoption were appropriate and what law should govern consent and consultations other than those with respect to the adopters; (b) the need for a system of supervision in order to ensure that those standards were observed; (c) the need for the establishment of channels of communication between authorities in the countries of origin of the children and those countries where they live after adoption; and (d) the need for co-operation between countries of origin and destination.

45. INTERPOL indicated that with a view to obtaining the required information on adoption of children for commercial purposes, the General Secretariat had addressed a circular to member countries in January 1990. It was indicated that as of 20 February 1990, 31 replies had been received altogether. Most of the answers except for two were negative with some countries stating that adoption for commercial purposes was unknown as an offence under criminal law. In the reply from France, it was stated that the one case of illegal adoption reported to the authorities was now subjudice. In the answer from Yugoslavia no case had been registered in police records although according to unconfirmed reports reaching the police, Yugoslav children belonging to a nomadic ethnic group had been given for adoption in Italy in exchange for financial compensation.

46. In the reply from the Organization of American States (OAS) it was related that to date the Inter-American Commission had not published reports on the question of adoption for commercial practices. However, the OAS indicated that it was in the process of elaborating a treaty on forced disappearances, a section of which, draft articles 19 and 20, was to deal with the adoption of children of victims of forced disappearances.

D. Information received from non-governmental organizations

47. Information from non-governmental organizations centred on allegations of the practice of adoption for commercial purposes, the causes of this phenomenon and recommendations for preventive action.

48. Defence for Children International gave details of a report prepared by its Ecuadorian Section on the situation in Ecuador with regard to international adoptions in 1988. It being stated that the socio-economic situation, particularly the debt problem and high inflation, prevailing in that country had affected children especially and that the institutional arrangements for the care and protection of minors covered only 1.12 per cent of the population at risk and that a great many children were potential victims of "child-stealing" and "trafficking in minors". The information continued with a description of the adoption procedure in 1988 which in brief

terms dealt with the capacity of the adopter, the conditions for being adopted and the necessary consents. It was stated that the legislation concerning international adoptions had proved to be deficient between the years 1981-1989, and that the discovery of illegal adoptions in 1988 exposed the limitations of, and gaps in, laws governing international adoptions. Certain case studies it was stated, revealed that while the majority of adoptions bore every appearance of legality. However, out of 166 adoptions of minors by couples from Italy, the United States, Norway and the United Kingdom, approximately 50 adoptions were said to have been irregular by reason of the absence of certain documents, the non-observance of certain requirements, the lack of clarity of the social reports on children or the extreme rapidity of the adoption procedure, showing the lack of care taken by those responsible in the competent bodies in carrying out the adoption procedures and determining the origins of minors.

49. A description of several cases was presented which claimed, inter alia, that well-organized gangs were engaged in handing over minors to lawyers and institutions that carried out adoption procedures. The negative role of lawyers in the negotiation process was also emphasized and the possibility that they could obtain children by falsely registering minors through the use of "bogus parents"; applying to the Juvenile Court for a declaration of abandonment or by misleading parents so that their children could be handed over for adoption. It was also stated that a report prepared by a social worker of the National Directorate for the Protection of Minors gave evidence of other ways of obtaining children such as the use of deceit and threats against the parents of minors to induce them to give their consent.

50. In addition, it was noted that new adoption regulations had entered into force in Ecuador on 12 January 1990 under Executive Decree No. 1177 and that Defence for Children International had participated in drafting these regulations which laid down a number of requirements and established under the Ministry of Social Welfare, the National Adoption Council and the Technical Adoption Unit. The functions they would perform included, inter alia, proposing and/or promoting policies or programmes with respect to adoption. Those programmes and policies were intended to prevent abandonment, follow-up on adopted minors and control the pre-adoption stage. It was also reported that international adoptions would only take place under agreements concluded by the Ecuadorian Government with other Governments or bodies legally recognized by their respective Governments. According to the new regulations, it may also be interesting to note that adopters have been placed under the obligation to leave a representative of Ecuadorian nationality empowered to reply to inquiries relating to adoption for four years; that arrangements have been instituted for the encouragement of domestic adoptions and that the authorities competent to conduct adoption procedures are the juvenile courts. In conclusion it was stated, inter alia, that so far agreements had been signed with Belgium, the Netherlands, Norway and one state within the United States of America; and that international adoptions were accepted because it was certain that the Ecuadorian people were not ready to adopt Ecuadorian minors.

51. The International Federation of Social Workers (IFSW) stated that the issue of the adoption of children for commercial purposes was addressed by the IFSW General Meeting held in Stockholm in July 1986. The IFSW General Meeting had set up a working party of interested associations to develop practical

guidelines for social workers with respect to international adoptions, especially when an element of commercial gain was involved. The working party would report on that specific area of concern to the social work profession in August 1990 in Buenos Aires, Argentina.

52. The International Federation Terre des Hommes (FITDH) stated that adoption for commercial purposes was not only making profit from an act which should be disinterested and free of charge, but in some cases helped to hasten the breakup of the social fabric by prematurely separating children from their families. Members of the FITDH preferred development aid to individual assistance. The Federation provided information on allegations of trafficking in children connected with adoption for commercial purposes. For example, it was stated that in Peru a network of traffickers had sought out children in the poorest neighbourhoods of Lima and that from a day centre run free of charge for the children of single mothers and poor families, children had simply disappeared, having been sold in Europe with false papers. Other allegations related to: South Korea, where, it was alleged conditions in the country favoured the practice of adoption for commercial purposes; Switzerland, details were given of a recent court case in Lausanne of the sale of Lebanese children by a Lebanese woman; and the United States, where some child placement agencies arranged adoption for commercial purposes but the State had no way of punishing their actions until there were a sufficient number of complaints against the agency.

53. FITDH offered numerous causes for adoption for commercial purposes which may be summarized as follows: in the case of adoptive parents, it was their inability to have a child combined with the lack of children available for adoption and the slowness of administrative and legal procedures for adopting that made them resort to illegal intermediaries. In addition, adoptable children were located a great distance away and the adoptive parents and their legal intermediaries lacked familiarity with the language and customs of the country of origin of the child, thus jeapordizing their efforts to deal with an honest agency. In the case of the biological parents, most of whom were from developing countries, the causes were, inter alia, poverty and lack of support, advice and education. In more than two thirds of cases, it was stated, children were given up by single mothers in both economic and social difficulty. For the illegal intermediaries, the motivation was the profit. Intermediaries could be lawyers, social workers, private clinics, doctors, etc., working individually or within an organized network. Inadequate efforts by social workers to find the parents of abandoned children, the kidnapping of children and the legal vacuum existing in certain countries were also considered factors contributing to the expansion of adoption for commercial purposes.

54. By way of conclusion, the FITDH offered the following suggestions to the Sub-Commission: the Convention on the Rights of the Child should be ratified; women's rights should be strengthened and promoted; civil registration procedures, frontier controls, monitoring systems for the prevention of illegal adoptions, etc., should, if necessary, be strengthened and extended; adoption abroad should be effective only with the co-operation of legally recognized intermediaries from the two countries concerned; entry visas should be refused for a child if the application is made by a person known to be trafficking in children and the offenders should be punished with appropriate

severity; awareness should be developed among prospective adoptive parents of the real situation of children in the Third World, that not all adoption methods are lawful and of the problems for the child if the adoption fails.

55. The Inter-Parliamentary Union drew attention to the conclusions and recommendations of the meeting of parliamentarians on "Rights of the Child, towards peace and development in Central America" held in Guatemala City from 1 to 3 December 1988, and in particular to recommendation 8 of the "Plan of Action" which was concerned with taking "measures to improve the laws and if necessary promote adequate action to prevent children from being victims of exploitation, especially in the process of adoption".

II. THE RECRUITMENT OF CHILDREN INTO GOVERNMENT AND NON-GOVERNMENTAL ARMED FORCES AND THEIR PARTICIPATION IN HOSTILITIES

A. Background

56. As the wording of resolution 1989/41 of the Sub-Commission specifically requested a report on the recruitment of children into the armed forces and their participation in hostilities, and because of limitation of space, other serious matters relating to the overall protection of children as members of the civilian population, the general effects and consequences of armed conflict and their impact on the survival and development of children and the special protection afforded to children within human rights instruments, per se, will not be addressed although mention will be made of rehabilitation measures for those children directly affected by armed conflict.

57. The various international instruments that provide for the special protection of children, in general and/or specifically, include: the Geneva Declaration on the Rights of the Child of 1924, the Declaration on the Rights of the Child of 1959, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 1974, the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally of 1986, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985, the Fourth Geneva Convention of 1949 and the Two Additional Protocols of 1977 to the 1949 Geneva Conventions as well as the 1989 Convention on the Rights of the Child.

58. The first two instruments to address the need to protect children who take part in hostilities were the Two Additional Protocols adopted on 10 June 1977. Both Additional Protocols contain specific references to the age at which children may be recruited into the armed forces. It may also be noted from the provisions within international humanitarian law that in those cases where children who have not attained the age of 15 years do take part in hostilities, whether they are prisoners of war or not, they should benefit from the special protection accorded to them by Article 77 of Protocol I which states, inter alia, that they be the object of special respect, protected against any form of indecent assault and because of their age or for any other reason the "Parties to the conflict shall provide them with the care and aid they require". Both Protocol I and Protocol II contain provisions relating to offences carrying the death penalty, specifying that it shall not be carried out on persons who were under the age of 18 years at the time of the offence (Protocol I, Article 77 and Protocol II, Article 6 (4)) (see para. 92).

59. In response to the comprehensive approach taken towards protecting children's rights during the drafting of the Convention on the Rights of the Child, a provision for the protection of children in armed conflict was extensively debated and incorporated. The exercise of drafting the Convention on the Rights of the Child served to focus attention on the interdependency of all human rights, international humanitarian law and other international standards as well as the need for greater co-operation and efforts to meet the requirements for improved implementation of the rights proclaimed and adopted.

60. The article of the Convention on the Rights of the Child relevant to the issue of the protection of children in armed conflict is Article 38, which states that:

(a) States Parties undertake to respect and to ensure respect for rules of humanitarian law applicable to them in armed conflicts which are relevant to the child;

(b) States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities;

(c) States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest;

(d) In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

61. At the time of its development there was a great deal of discussion as to whether the age of 15 years was an appropriate one for the recruitment of children in armed conflict. During the debate on the draft convention in the Commission on Human Rights and the General Assembly's Third Committee, various States gave their opinions on the Article's provisions as regards their preference for and future interpretation of the Article's contents with, inter alia, the age of recruitment of children into armed forces and military service, the level of protection it affords or should afford vis-à-vis existing instruments, the situation of children involved in national liberation struggles, the situation of Palestinian children and children in South Africa and the relevance of Article 41 of the Convention, which relates that nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in (a) the law of a State Party; or (b) international law in force for that State. (See E/CN.4/1989/48 and A/C.44/SR.36 to 45.)

62. Despite the concerns expressed, as briefly mentioned above, it was the general view of States that Article 38 was to be welcomed as an addition to the Convention on the Rights of the Child.

63. In contrast to the appreciably wider coverage given to the issue of commercially-motivated adoptions, the issue of the recruitment of children into the armed forces and their part in hostilities has not attracted the attention of human rights bodies until very recently. The following paragraphs offer an indication of the extent to which this issue has been addressed.

64. The report of the Sub-Commission on Conscientious Objection to Military Service by Mr. Asbjørn Eide and Mr. Mubanga Chipoya stated (para. 10) that:

> "Attention has also been drawn to a related but different problem, namely that of children and young adolescents in armed forces. Even when the individual child does not object to such service, it is doubtful that

he can be sufficiently responsible to take such a decision, and in any case the use of children must be considered unacceptable. Since this is not a question of conscientious objection, it is not further dealt with in this report, and material has not been collected on the occurrence of the phenomenon. But in the recommendations it has been suggested that the Sub-Commission should consider action to be taken to follow up this problem". (See paras. 10 and 154 of E/CN.4/Sub.2/1983/30/Rev.1.)

65. At the United Nations Seminar on Ways and Means of Achieving the Elimination of the Exploitation of Child Labour in All Parts of the World, held in Geneva from 28 October to 8 November 1985, the special attention of the Seminar was drawn, inter alia, to the problems of children in armed conflicts as soldiers. "The Seminar was in complete agreement that these forms of child labour should certainly be considered as exploitative, and should be eliminated as soon as possible." (See para. 28 of ST/HR/SER.A/18.)

66. Moreover, according to the 1986 review papers of UNICEF on Children in Especially Difficult Circumstances, not only would the recruitment of children into the armed forces constitute a slavery-like practice, but also the very nature of military service was considered exploitative child work endangering directly the survival as well as the physical, emotional and social health and development of children. As exploitative child work it was regarded as intolerable and to be abolished. (See also UNICEF document E/ICEF/1986/CRP.3 on the Exploitation of working and street children and documents E/ICEF/1986/CRP.2, E/ICEF/1986/L.6 and E/ICEF/1986/L.3 on Children in especially difficult circumstances.)

67. The relationship between armed conflict and child refugees has also been extensively addressed by UNHCR. In its Guidelines on Refugee Children of 1988, guided as they are by the best interests of the child and family unity, priority issues are identified and guidelines presented for the practical steps Field Offices can take to address their needs. Within the section of the Guidelines on UNHCR action to promote and ensure the liberty of refugee children it detailed, inter alia, that measures were to be taken to ensure the safety of refugee children from being victims of military and armed conflict; the attention of national authorities of the concerned country of asylum and UNHCR Headquarters were to be drawn to any instances of the recruitment of children into armed forces, whether forced or voluntary, in supportive functions or on active combat duty; priority attention was to be given to the immediate treatment, recovery and rehabilitation of children who had suffered trauma due to torture, abuse or other violence; funding for such treatment may be made available through the United Nations Voluntary Fund for Victims of Torture in Geneva. A separate section of the Guidelines focusing on the Prevention and Treatment of Disabilities details, inter alia, that where individuals suffer disabilities related to their situation as refugees, such as injuries related to war, etc., appropriate rehabilitation services should be provided; the guidelines offered indicated, among other things, that community-based rehabilitation as advocated by WHO and experts in the rehabilitation field is the basic strategy for Field Offices.

68. At its 891st meeting, on 5 April 1989, the Human Rights Committee, established as the implementation body for the International Covenant on Civil and Political Rights, adopted a General Comment on Article 24, concerned with the rights of children. The General Comment states, inter alia, that:

"the reports submitted by States Parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to special protection ... Moreover, the Committee wishes to draw the attention of States Parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts ... The Covenant does not indicate the age at which the child obtains his majority. This is to be determined by each State Party in the light of the relevant social and cultural norms. However, the Committee notes that it should not be set unreasonably low and that in any case a State cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law". (See General Comment 17 (35) on Article 24 in document CCPR/C/21/Rev.1, p. 21.)

69. The issue of the recruitment and participation of children in hostilities had been brought to the attention of the Working Group on Contemporary Forms of Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities on several occasions.

70. In information forwarded to the Working Group on Contemporary Forms of Slavery it was indicated that following discussions of the documents relating to Children in Difficult Circumstances by the Executive Board of UNICEF, it was decided to further promote and build on existing programmes with Governments and non-governmental organizations for the benefit of children in difficult circumstances. Subsequently UNICEF in 1988, in collaboration with the University of Colombia, began work on the project "Children at War"; it was stated that information on the project would be made available at a later date. (See document E/CN.4/Sub.2/AC.2/1989/5/Add.2.)

71. In further information received by the Working Group on Contemporary Forms of Slavery in 1988 and 1989, points raised included the view that the conditions of service for children in armed services should be examined in the same way as the conditions of the child labourer, whether one believed that neither the child labourer nor the child soldier should exist in modern society. Therefore it was suggested that more research was required to reveal details of their conditions of service, including payment for military service, veteran's benefits, education and training for employment, treatment of child soldiers by their officers and aspects of military training. Several questions were also asked, in the information presented, as to the global condemnation of the extra-legal conscription of children under the age of conscription into the armed forces, the responsibility of the United Nations for discouraging the recruitment of minors into the armed forces, encouraging an agency or researcher to examine the conditions of service for children and youth under 18 serving in armies and guerrilla forces, and encouraging Governments to reintegrate child soldiers into society in an entirely civilian process. The view was also expressed that the manner in which young soldiers had been used in some conflicts had also caused widespread concern in that it was alleged that their youthful lack of experience had been exploited and they had been sent to the front-line in battle. (See E/CN.4/Sub.2/1989/39, paras. 93-103, E/CN.4/Sub.2/AC.2/1988/7, E/CN.4/Sub.2/AC.2/1987/WP.4 and para. 42 of E/CN.4/Sub.2/1983/27.)

B. Information received from Governments

72. In the main, information received from States on the subject of the recruitment of children into armed forces related details of national legislation as regards age of conscription, voluntary service, military training, deferment from military action and the involvement of women in military service.

73. With regard to the replies from States on the national legislation relating to recruitment age, the general conscription age for military service for male citizens was 18 years in China, Colombia, Dominican Republic, Finland, Sweden, Uruguay and the Ukrainian SSR. In Austria and Mexico every male citizen from the age of 17 was liable for military service, but the conscription age for regular service in Austria was 18. In the case of Tunisia, the age of required entry into military service was 20 or over, although citizens between the ages of 18 and 23 might enlist in the army if they had the necessary consent if under the age of 20, which is the age of majority in Tunisia. Saudi Arabia replied that compulsory recruitment into the armed forces did not exist in Saudi Arabia.

74. Details of the granting of deferment from military service were provided by Tunisia and the Ukrainian SSR on various grounds, such as education, physical disability and family circumstances.

75. Uruguay pointed out that persons under the age of 18 may receive pre-military instruction in primary, secondary, industrial and professional education establishments; however it was indicated that this provision had not been applied as Uruguay had not been involved in an armed conflict for more than a century. Information regarding the undertaking of studies in military or training institutions was provided by Mexico and the Ukrainian SSR.

76. In the reply from Mexico mention was made of the Colegio Militar (Military College) and of the Escuela Superior de Guerra (Higher School of War), which recruited young people who, on completing their education, automatically joined the Mexican armed forces, where they were required to complete several years of professional service in the field in which they had been trained; in the case of pupils who entered to prepare for the baccalaureate while still minors, they committed themselves to serving the State until they reached the age of majority.

77. Information forwarded from the Ukrainian SSR stated that citizens of the male sex who had expressed a desire to study in military training institutions might be admitted to such institutions provided that they reach 17 years of age in the year of admission for training. It was indicated that those citizens admitted to military training institutions were on active military service, were known as military school students, and that the obligations laid down for military personnel on fixed-term engagements applied to them.

78. With regard to volunteering to perform military service, several States indicated that provisions in the relevant law covered this possibility. Austria stated that persons who had reached the age of 17 and were liable for military service might volunteer to perform their term of service in advance (Section 15 of the Military Service Act). Finland stated that it was possible to volunteer for service at the age of 17. Iraq stated that Revolutionary Command Council decision 870 of 17 November 1986 stipulated that at the time of enlistment, at any military rank, a volunteer must not be under 14 or

over 25 years of age, and that the Military Service Act No. 65 of 1969, as amended, made no provision for the recruitment of children into armed forces. Uruguay supplied information regarding its reserve forces which indicated that no one under the age of 18 might be a member and that the Regular Army was also composed of volunteers 18 to 45 years old, under contract for a period of not less than one year, such contracts being renewable.

79. As to the involvement of women over the age of 18 in military service, information was forwarded by China and the Ukrainian SSR.

80. With regard to the recruitment of children in military service, China indicated that in line with its legislation on military service there was no question of children performing military service. The reply from Colombia stated that there were no children serving in the Colombian army. The Dominican Republic offered the information that its legislation did not provide for the recruitment of children into the government armed forces. Finland reported that a child should not become a conscript or participate in armed conflicts and that the best way to prevent this was for each State's legislation to prescribe the conscription of children. Iraq condemned the recruitment of children into armed forces for any reason whatsoever.

81. Mexico stated that as it had not been involved in armed conflict in the recent past, military recruitment of minors had not taken place in Mexico. Portugal's reply stated, inter alia, that in recent years children had been used in various conflicts, which had caused very profound and often irreparable physical, mental or moral harm in view of children's immaturity. No effort should be spared to prevent the participation of children in armed conflicts. Portugal also regarded it as necessary to strengthen the protection of the civilian population in general and of children in particular, one important step being the non-recruitment of children into armed forces.

82. Sweden stated that it welcomed the decision by the Sub-Commission in its resolution 1989/41 to give attention to the recruitment of children into armed forces, as well as the recognition by the Sub-Commission that in connection with Article 38 of the Convention on the Rights of the Child, no effort should be spared to prevent the militarization of children. Sweden also reiterated the points from its statement during the adoption of the Convention on the Rights of the Child in the General Assembly on 15 November 1989, namely that the Swedish Government was of the opinion that it should be incumbent upon all States to ensure that persons below the age of 18 years should not be recruited into armed forces and used as soldiers and that Sweden expressed its firm intention to continue with efforts to improve the standards with regard to the protection of children in armed conflict.

C. Information received from United Nations organs, specialized agencies and intergovernmental organizations

83. The replies from these organizations related, in large measure, to any operational activities which had taken account of the issue of children in armed conflict and to any reports of meetings which had addressed the issue from their particular field of concern.

84. Information from regional organizations in connection with the issue of disabilities was forwarded by the Economic and Social Commission for Western Asia (ESCWA). It was stated, inter alia, that the Conference on Capabilities

and Needs of Disabled Persons in the ESCWA region had recognized that prolonged armed conflicts such as the Iran-Iraq war, the Lebanese conflict and the intifadah in the occupied territories had all added to the gravity of the disability problem in the ESCWA region. Three background papers that had been presented at the Conference were forwarded for information; these had been described as studies carried out under the specific political and social conditions of the region and included statistics regarding age distribution of victims of armed conflicts and available rehabilitation programmes for various categories of disabled children in those countries. (See E/CSCWA/SD/89.WG.1/15, 22 and 24.)

85. The reply from UNHCR stated, inter alia, that with regard to the forcible recruitment of children, UNHCR's position was that no child (as opposed to any child under 15 years) should be recruited. UNHCR had noted with concern an increase in instances involving the recruitment of refugee children into the belligerent forces. Such recruitment, it was stated, occurred in several countries of Africa, Asia and Latin America and involved many thousands of refugee children. It was carried out not only by State armies but also by irregular armed groups involved in combat either in the country of asylum or against the authorities of the country of origin; refugee children were required to carry out various tasks when enrolled, which included carrying equipment and food, planting mines and participating directly in fighting. UNHCR stated that this practice was deplorable and unacceptable from all perspectives; that it placed the life and integrity of the child at risk and was contrary to accepted notions that children must not take a direct part in hostilities and that refugees were civilians whose camps and settlements had a strictly humanitarian character. UNHCR reported that it had taken several steps with a view to preventing the forced recruitment of refugee children and ameliorating the condition of refugee children in general. Notably, in August 1988, UNHCR had issued a set of guidelines on refugee children which contained the policies guiding UNHCR's action in these areas and indicated concrete steps that could be taken to ensure that the needs of refugee children were met. The guidelines instructed UNHCR Field Offices to report all incidents involving the recruitment of refugee children into any armed forces; UNHCR had already intervened in a large number of situations with a view to preventing the forced recruitment of refugee children, most recently within the framework of the fortieth session of the Executive Committee of the High Commissioner's Programme, "States called upon UNHCR to promote the best possible legal protection of unaccompanied minors, particularly with regard to forced recruitment into armed forces ...".

86. ILO stated that as regards programmes for the rehabilitation of children who were victims of armed conflict, it was expected that a number of such children would be included among persons benefiting from two projects currently being undertaken by ILO, the Rehabilitation Centre for Disabled Mothers and Children in Kabul (Afghanistan) and the Human Resources Development Centres for Afghans in Pakistan, which include a sub-project on vocational rehabilitation and employment of disabled Afghans in Pakistan.

87. UNESCO forwarded the report (SHS-88/CONF.6046) of a meeting which had been organized in 1988 in collaboration with the Costa Rican Commission for Co-operation, entitled "International meeting of experts on action in the field of education and information concerning children in situations of armed conflict". Among the conclusions arrived at it was stated, inter alia, that children were increasingly being militarized and employed as combatants; that

in many cases children had been forced to engage in military or para-military activities while in other cases food shortages, the lack of educational opportunities and family support had left them with few alternatives to enlisting in the armed forces to meet their physical and emotional needs. The psychological and psychiatric effects of armed conflict on the child's development were also noted. In general little was known of the psychological needs of children who were refugees from, or victims of, armed conflict and preventive and curative action was practically non-existent. In order to provide adequate protection and assistance to children who were victims of armed conflict, an adequate programme of assistance and follow-up for their rehabilitation was required. On the matter of education, the fundamental importance of creating and developing an awareness of human rights teaching was raised, in addition to the informing and teaching of international humanitarian law at all levels of formal and non-formal education, particularly to military and para-military personnel in government armed forces and rebel groups. On the basis of the debate and discussions during the meeting, the recommendations forwarded by the group concentrated on information campaigns and other efforts to promote better implementation, awareness and teaching of human rights and international humanitarian law. Appropriate programmes for achieving such results should be prepared for all concerned parties, whether victims of armed conflict or members of the armed forces. Emphasis was also placed on initiating research programmes on the effects of armed conflict on child victims. Finally, recommendations called for improvements in co-ordination and co-operation between various parties at different levels, such as interaction between field workers and researchers, multi-disciplinary action in collaboration with governments and non-government institutions and follow-up meetings to be encouraged from all interested parties.

D. Information received from non-governmental organizations

88. Replies received to the request for information from non-governmental organizations covered, inter alia, information relating to allegations on the use of children in armed conflict, measures being taken to rehabilitate those children affected by armed conflict and recommendations for future action.

89. Among the information forwarded by the Friends World Committee for Consultation (Quakers) were various monthly issues, covering the years 1987-1989, of the "Children bearing military arms" documents by Dorothea Woods. The contents of this material focused on news media and other reports and articles on the involvement of children in armed conflict, from supportive functions to direct combat, the general impact of war on children and the militarization of children. In addition, it detailed the efforts being undertaken to address these matters within the non-governmental community and international organizations. This information was also supplemented with details of children's involvement in wars throughout history. Statements by FWCC at United Nations meetings were also forwarded, drawn in part from the monthly material previously mentioned. It was stated that some of the recruitment of children into armed forces had slavery-like aspects, as for example forced recruitment, kidnapping and street round-ups; that many children had been killed or maimed as a direct result of participating in armed conflicts, others languished as prisoners of war and some of those child prisoners of war had been sujected to interrogation, beatings and torture. From information received in the issue entitled "Children at war some outstanding problems in 1989" (similar information was presented at the 14th session of the Working Group on Contemporary Forms of

Slavery), it was stated that with the cease-fire in the Gulf War in 1988, the number of child soldiers in the world had been cut in half and it was hoped that peace negotiations on Angola, Kampuchea, Nicaragua, Sri Lanka, the Sudan, Western Sahara and Namibia would diminish the number of children at war even further. Regarding the situation of child prisoners of war, it was stated that the Additional Protocols to the Geneva Conventions of 1949 made provision for child soldiers who were taken prisoner of war and that they benefited from the general provisions for prisoners of war but they were to be quartered separately. The information stated, inter alia, that child soldiers who were taken prisoner faced various problems, depending on whether the warring parties had ratified the Additional Protocols, were involved in peace negotiations, gave priority to this issue and permitted the International Committee of the Red Cross to intervene in a civil conflict. Two problems had to be faced concerning the improvement of the conditions of the child soldier and the elimination of the use of the child soldier; these consisted of the forced and illegal recruitment of children for military action and the situation of child prisoners of war. Information was also forwarded with regard to the rehabilitation of children in the aftermath of conflict, indicating that non-governmental organizations had co-operated with governments to return children to school and that voluntary teachers had run schools. In other cases it was stated that local organizations for those disabled as a result of armed conflicts had been developed and that these organizations had tried to improve transportation for the handicapped, remove architectural barriers and prepare legislation to protect the rights of the disabled. Other points related to the Convention on the Rights of the Child; it was stated that the Convention does not contain any provision for constraints on the voluntary enlistment of youth under 18 or for countering the kidnapping of youth impressed into the armed forces.

90. Information relating to the statements of Governments during the adoption of the Convention on the Rights of the Child was forwarded. Other material presented by the organization included the booklet by the ICRC entitled Children in Situations of Armed Conflict, which in its conclusions stated that there was:

> "no denying that children continue to be the innocent victims of armed conflicts. In order to bring their suffering to an end, to ensure that they are no longer wounded or killed by bombs and mines, thrown in prison, ill-treated, separated from their families or recruited into the armed forces, it is of prime importance that the international community is aware of the extent of the problem and ensures the respect of provisions already in force. Responsibility for the application of provisions providing special protection to children and indeed for all provisions of international humanitarian law, is collective. It is the duty of the States parties to the Geneva Conventions of 1949 and to the Additional Protocols of 1977 to respect and ensure respect for these standards".

From proposals by the Friends World Committee for Consultation it was suggested that the Sub-Commission should appeal to States on humanitarian grounds to permit international organizations access to child prisoners of war; that it was necessary for the United Nations to monitor the military use of children and to establish guidelines for international response to States which are a party to the utilization of children for military purposes and

that a special rapporteur should be appointed to study the recruitment of children into government and non-government armed forces and their participation in hostilities.

91. The International Catholic Child Bureau presented information from its "Progress report on action projects for ICCB Council meetings". It was stated that these research projects focused on children who were refugees as a result of armed conflict and that the methodology adopted for interventions was community-based. One of the aims of the projects was that the concrete strategies suggested for dealing with the problems that arose were based upon both traditional practices and methods considered effective in other similarly affected communities. Of the projects underway, one related to the psycho-social needs of Salvadorian mothers and children. Others included the completion of a project in Zambia where a consultant had worked at a refugee settlement for Mozambican refugees. Information was also provided on three recent meetings organized because of the interest shown on the applicability of the methodology which the organization implemented within the area of refugee mental health and also its appropriateness and responsiveness to emergency relief work in natural and man-made disasters. A number of publications were in preparation following on from the organization's activities.

92. The reply from ICRC stated, inter alia, that the recruitment of children and their participation in hostilities were unacceptable practices, and that the problem deserved our full attention. Details of the relevant provisions within article 77, (para. 2) of Protocol I and article 4 (para. 3(c)) of Protocol II were quoted. Article 77 (para. 2) of Protocol I specified that in an international conflict:

> "The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years the Parties to the conflict shall endeavour to give priority to those who are oldest".

In this regard, it was stated that three obligations incumbent on the Parties in an international conflict flow from article 77 (para. 2), namely: an absolute ban on recruiting and permitting the recruitment of children under the age of 15 into the armed forces; a recommendation to give priority to those who are oldest when recruiting children between the ages of 15 and 18; and also a duty to take all feasible measures in order that children do not spontaneously take part in hostilities. With reference to non-international armed conflict, it was stated that: article 4 (para. 3 (c)) of Protocol II, while based on article 77 (para. 2) of Protocol I, imposes stricter obligations on the Parties to the conflict, in that not only is direct participation in hostilities prohibited, so too is any act of indirect participation, such as the transmission of military information, the transportation of arms, ammunition or war equipment, etc. In non-international armed conflict, article 4 (para. 3 (c)) of Protocol II specifies that: "Children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities." In conclusion it was stated that despite the existence of these provisions,

children continue to be enrolled in armed forces and to participate in hostilities and that measures should be taken to ensure compliance with the existing provisions.

93. Information from the International Federation of Social Workers dwelt, among other things, on its willingness to continue to involve itself in the issues of children bearing arms and the age of recruitment of young persons into armed forces.

94. The Inter-Parliamentary Union drew attention to a previously published document (E/CN.4/1989/54 of 19 January 1989) containing the conclusions and recommendations of a workshop meeting in Guatemala entitled "The Rights of the child, towards peace and development in Central America", at which it was recommended, among other things, that the process of the ratification of the Two Additional Protocols to the 1949 Conventions be expedited, that the concept of "Children as a Zone of Peace" be promoted in Central America, and that the creation of a Central American fund for technical and financial co-operation for the care of children affected by armed violence be supported by the international community.

III. CONCLUSIONS

95. It should be mentioned that the convenience of dividing this report into two chapters is not to suggest that points of overlap between the two issues do not exist. From this report it may be discerned that elements from, among other things, the UNHCR Guidelines on Refugee Children (particularly pp. 7-10 and 27-32) and the newly adopted Convention on the Rights of the Child relate to these issues. (See also the conclusion (h) from page 11 of the Report of the fortieth session of the Executive Committee of the Programme of the UNHCR, document A/AC.96/737.)

96. With the adoption of the Convention on the Rights of the Child by the General Assembly on 20 November 1989, which, up to 10 May 1990, 81 States had signed and 5 States had ratified or acceded to, it is to be hoped that the Convention will soon enter into force and its implementation body, the Committee on the Rights of the Child, will be set up thereafter. According to article 45 of the Convention on the Rights of the Child, it should be noted that in order to foster the effective implementation of the Convention and to encourage international co-operation in this field, a system of studies on specific issues relating to the rights of the child has been provided for. In this regard the complementary mechanisms of studies by United Nations human rights bodies and the future Committee on the Rights of Child should be recognized.

97. From the information forwarded for the compilation of this report with regard to commercially-motivated adoptions, and taking into consideration that three previous reports of the Secretary-General on the sale of children had touched upon this issue, it is to be hoped that a more informed picture of the subject has developed which may be of value, inter alia, to various United Nations human rights bodies and to the Special Rapporteur who will prepare a report on the matter of the sale of children for presentation at the forty-seventh session of the Commission on Human Rights, in 1991, pursuant to Sub-Commission resolution 1989/42 and Commission on Human Rights resolution 1990/68.

98. It should also be noted that the draft programme of action for the prevention of the sale of children, child prostitution and child pornography, as recommended by the Working Group on Contemporary Forms of Slavery at its fourteenth session, in 1989, and subsequently endorsed by Sub-Commission resolution 1989/42 and Commission on Human Rights resolution 1990/67, has been transmitted to Governments, specialized agencies, intergovernmental organizations and non-governmental organizations for their comments and that an analytical summary of the replies received would be presented to the Commission at its forty-seventh session, in 1991.

99. In addition, the proposed preparation of a private international law agreement on international adoption, not forgetting the regional, national and bilateral agreements and legislation on this matter, demonstrates some of the most recent efforts being made to protect children against commercial adoption practices.

100. As to the recruitment of children in armed conflict and their participation in hostilities, considering the content of the information presented, the Sub-Commission may wish to consider whether further study on this matter should be undertaken.

101. Resolutions of the Commission on Human Rights and the Sub-Commission with a bearing on the issue of human rights and armed conflict include Sub-Commission resolution 1989/24 and Commission on Human Rights resolution 1990/66, concerned as they are with education in the international law of human rights and humanitarian law applicable in armed conflicts. It was stated in these resolutions that a report by the Secretary-General would be prepared to review replies received to the request that information be forwarded on the scope of education provided to members of the police and armed forces.

102. In addition, Commission on Human Rights resolution 1990/58 on advisory services in the field of human rights requested, inter alia, the Secretary-General to explore yet further the possibilities offered by co-operation between the Centre for Human Rights and United Nations bodies, such as the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees, as well as the International Committee of the Red Cross, in the development of strategies for the setting up or the strengthening of national and regional infrastructures for the promotion and protection of human rights and fundamental freedoms and the planning, execution and evaluation of specific projects.

103. Furthermore, in Commission on Human Rights resolution 1990/72 on the development of public information activities in the field of human rights, including the World Public Information Campaign for Human Rights, it was stated, inter alia, that the Commission on Human Rights emphasized the need for the United Nations to harmonize its public information activities in the field of human rights with organizations such as the International Committee of the Red Cross and the Office of the High Commissioner for Refugees in relation to the dissemination of information on international humanitarian law and, with regard to education for human rights, the United Nations Educational, Scientific and Cultural Organization.

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Item 16 of the provisional agenda

CONTEMPORARY FORMS OF SLAVERY

Report of the Secretary-General prepared pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1989/41

Addendum

The present document contains information submitted by the United Kingdom of Great Britain and Northern Ireland.

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

1. The United Kingdom deplores in all circumstances the adoption of children for commercial purposes. The United Kingdom supports the United Nations Declaration on Foster Placement and Adoption which proposes, inter alia, the establishment of laws to prohibit the abduction and illicit placement of children; and specifies that no improper financial gain should result from those involved in inter-country adoption which should, as a rule, only be made through competent authorities or agencies.

2. Adoption in the United Kingdom is carefully regulated by law; an adoption order can only be made by a court. The court must be satisfied that adoption will safeguard and promote the child's welfare throughout childhood and, as far as practicable, ascertain the child's wishes and feelings, having regard to his age and understanding. The circumstances of a proposed adoption are

thoroughly investigated and a report must be submitted to the court by an adoption agency (either a local authority or a voluntary adoption society approved by the Secretary of State for Health).

3. United Kingdom adoption law prohibits any person from giving or receiving any illegal payment or reward for, or in consideration of, the adoption of a child. Anyone who makes, offers or receives an illegal payment is liable to imprisonment or a fine or both; and the court may direct that the child in question be removed to a place of safety until he can be restored to his parents or guardian or until other suitable arrangements can be made for him.

4. Before an adoption order can be made, the court must be satisfied that the child's parents have freely consented to adoption or that consent should be dispensed with on statutory grounds.

5. Similar standards apply in respect of children who enter the United Kingdom from overseas in connection with adoption; United Kingdom law recognizes adoption orders made by a court in countries specified in the Adoption (Designation of Overseas Adoption) Order 1973 on the understanding that adoption is regulated by requirements and safeguards similar to those which operate in the United Kingdom.

6. Before a person is given permission to bring a child to the United Kingdom from any other country for adoption, the circumstances relating to the application are carefully investigated. If it appears that any illegal payment has been made or received, that the proposed adoption would not be in the child's best interests or that the natural parents or guardians have not freely consented to adoption, the application may be refused. Where a person is granted permission to bring a child to the United Kingdom from such a country, an application to adopt must be made to a United Kingdom court: the application is subject to the same legal provisions as apply in domestic adoptions.

7. There is no conscription in the United Kingdom and recruitment into the armed services is purely voluntary. The United Kingdom's policies on the minimum age of recruits into the armed services and their participation in the activities of the armed services are in accordance with the provisions of international law. The minimum ages for recruitment into the armed services are as follows:

(a) Royal Navy: 16 for men, 17 for women;

(b) Army: 16 for men entering as juniors or apprentices, 17 for women;

(c) Royal Air Force: 16 1/2 for men, 17 for women.

8. The age of recruits is taken into account in determining the kinds of duties they undertake and those under 18 are unlikely to take a direct part in hostilities. In the Royal Navy, no one under 17 is drafted into submarines; in the Army, the minimum age for individuals who may take part in emergency overseas operations is 17 years 3 months (18 for women); and no one under 18 is employed as Royal Air Force aircrew.

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CONTEMPORARY FORMS OF SLAVERY

The adoption of children for commercial purposes and the recruitment of children into government and non-governmental armed forces

Report of the Secretary-General prepared pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1989/41

Addendum

The present document contains additional information submitted by the Government of Finland.

1. The Ministry of Justice has the honour to present the following comments and information relating to resolution 1989/41 entitled "Report of the Working Group on Contemporary Forms of Slavery". The resolution was adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 1 September 1989.

General

2. The Secretary-General of the United Nations has asked the Government of Finland to provide information relating to the aforementioned resolution. He has especially drawn attention to paragraph 5 of the resolution. According to the provision, the Sub-Commission has requested the Secretary-General to take into account the comments of Governments and further information, and to submit to the Sub-Commission a report on the issues referred to.

3. The Secretary-General has asked in particular for information on recruitment/conscription age, minimum age for participation in hostilities, programmes undertaken to rehabilitate children who are victims of armed conflicts, and adoption of children for commercial purposes. The information is given below in the same order.

Recruitment/conscription age

4. According to the Constitution Act (1919) every Finnish citizen has an obligation to defend his/her country or assist in that activity as provided in the Act.

5. In the Conscription Act (1950) it is stipulated that every Finnish male has to serve in the military (defence) forces for the defence of the country and its legitimate political order. The system is then based on general conscription.

6. In general, every Finnish male is called up for military service in the year he has reached or will reach the age of 18. Military service may be postponed for certain reasons, for example on the basis of unfinished studies. There is, however, an ultimate limit of 30 years for entering into service.

7. It is also possible for 17-year-old men to apply and to be accepted into the military service as a volunteer. This presupposes, inter alia, the consent of the legal guardian of the applicant.

8. Young musicians in the defence forces are a special case. After finishing his elementary school, which may take place at the earliest at the age of 15 years, a person may apply to and be accepted by the Military Music School for continuing his studies to the next educational level.

9. These persons are given general education through the normal education system and musical education by a conservatory. The defence forces educate them in basic military training, including physical exercise. This education for the degree of military musician takes four years.

10. They are located on the military base, where they are fully maintained. Even though they are continuously under the authority of the Finnish defence forces, they do their own military service normally, that is to say, only after having reached the age referred to above.

Minimum age for participation in hostilities

11. The Finnish legislation does not include any specific provisions defining the age when participation in hostilities is possible. Accordingly, all soldiers may be ordered by their superior officers to participate in hostilities. This applies also to 17-year-old volunteers.

12. It may be added that Finland has adhered to both the 1977 Additional Protocols to the Geneva Conventions of 1949. In the Second Protocol, which relates to non-international armed conflicts, there is a provision excluding children who have not yet attained the age of 15 years from all activities relating to armed hostilities. The First Protocol regulating international armed conflicts prohibits direct armed activities of children of the same age,

but it does not restrict indirect participation of any children, including volunteers, in hostilities. Article 38 of the Convention on the Rights of the Child (1989) does not include any stricter provisions.

Programmes undertaken to rehabilitate children who are victims of armed conflicts

13. In Finland there are no specific programmes which are aimed at the rehabilitation of children victimized by armed conflicts. This is partly due to the fact that Finland has not been involved in armed conflicts since the Second World War. If such children however exist, for instance among those moving to Finland, they are rehabilitated by means of the regular child care system.

14. Finland has, however, also participated in many aid operations of the United Nations abroad, the aim of which is, inter alia, to care and rehabilite children affected by armed conflicts. On this one may also refer to activities of the Finnish Red Cross.

Adoption of children for commercial purposes

15. Adoption of children is regulated in Finland by the Adoption Act and Decree (1985). The purpose of adoption is to promote the welfare of the child by creating a relationship of child and parent between the person to be adopted and the adopter. Adoption of a minor may only be granted if it is considered to be in the best interests of the child and if it has been established that the child will receive good care and upbringing. These general principles foreclose any possibilities of adoption for commercial purposes.

16. It is also specifically provided that adoption may not be granted if any remuneration for the adoption has been given or promised or if someone other than the adopter has, with a view to the adoption being granted, made or undertaken to make remunerative payments for the maintenance of the child. Any contract or commitment concerning the payment of remuneration or maintenance referred to is null and void.